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Wednesday
April 2, 1986

Briefings on How To Use the Federal Register—
For information on briefings in Dallas, TX, see announcement on the inside cover of this issue.

Selected Subjects

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How To Cite This Publication: Use the volume number and the page number. Example: 51 FR 12345.

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

DALLAS, TX

WHEN: April 23; at 1:30 pm.

WHERE: Room 7A23,
Earl Cabell Federal Building,
1100 Commerce Street, Dallas, TX

RESERVATIONS: local number
Dallas 214-767-8585
Ft. Worth 817-334-3624
Austin 512-472-5494
Houston 713-229-2552
San Antonio 512-224-4471,
for reservations

Contents

Federal Register

Vol. 51, No. 63

Wednesday, April 2, 1986

Separate Parts in This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
418.....11285
436.....11285
444.....11286
445.....11291
1106.....11297
1944.....11298
Proposed Rules:
1240.....11313

9 CFR
51.....11299
Proposed Rules:
93.....11316

14 CFR
39 (2 documents).....11300, 11301
Proposed Rules;
39 (2 documents).....11321, 11322

26 CFR
1.....11302
Proposed Rules:
1 (2 documents).....11323, 11324

30 CFR
Proposed Rules:
250.....11324

32 CFR
706 (3 documents).....11303-11305

39 CFR
Proposed Rule:
111.....11324

40 CFR
51.....11396
52.....11305
141.....11414
142.....11414
143.....11414
166.....11306
180 (3 documents).....11306, 11308

47 CFR
Proposed Rules:
69.....11328

49 CFR
565.....11309
571 (2 documents).....11309, 11310

50 CFR
642.....11310
Proposed Rules:
23.....11328

Rules and Regulations

Federal Register
Vol. 51, No. 63
Wednesday, April 2, 1986

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 418

[Doc. No. 0082A]

Wheat Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of extension of sales closing date.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith gives notice of the extension of the sales closing date for accepting applications for wheat crop insurance in California, effective for the 1986 crop year only. Due to the Agricultural Stabilization and Conservation Service's (ASCS) extension of the sign-up period for producer participation in the 1986 Price Support and Production Adjustment Programs, FCIC has determined to allow producer's additional time to enroll in the FCIC coverage program in California. The intended effect of this notice is to advise all interested parties of the extension of the sales closing date and to comply with the provisions of the wheat crop insurance program with respect to the Managers' authority to extend sales closing dates. The authority for this action is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: March 31, 1986.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: Under the provisions contained in 7 CFR 418.7, the sales closing date for accepting applications for wheat crop insurance in California is March 31. Because of the extension of the sign-up period allowed producers under the ASCS program, FCIC is extending the sales closing date in California.

Under the provisions of 7 CFR 418.7, the sales closing date for accepting applications may be extended by placing the extended date on file in the service office and by publishing a notice in the **Federal Register** upon determination that no adverse selectivity will result from such extension. If adverse conditions develop during such period, FCIC will immediately discontinue acceptance of applications.

Notice

Accordingly, pursuant to the authority contained in 7 CFR 418.7, the Federal Crop Insurance Corporation herewith gives notice that the sales closing date for accepting applications for wheat crop insurance in California, is hereby extended through the close of business on April 15, 1986, effective for the 1986 crop year only.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Done in Washington, DC, on March 28, 1986.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 86–7252 Filed 4–1–86; 8:45 am]

BILLING CODE 3410–08–M

7 CFR Part 436

[Doc. No. 3291S]

Tobacco (Guaranteed Plan) Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of extension of sales closing date.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith gives notice of the extension of the sales closing date for accepting applications for tobacco crop insurance in North Carolina, effective for the 1986 crop year only. This action is necessary because actuarial material for tobacco, combining the provisions of the Dollar Plan of tobacco crop insurance with the Guaranteed Plan of tobacco insurance, has just been received by agents. Additional time is hereby accorded agents to market new and existing tobacco contracts in North Carolina. The intended effect of this notice is to advise all interested parties of the extension of the sales closing date and to comply with the provisions of the tobacco crop insurance program with respect to the Manager's authority to extend sales closing dates. The authority for this action is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: March 31, 1986.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: Under the provisions contained in 7 CFR 436.7, the sales closing date for accepting applications for tobacco crop insurance in North Carolina is March 31. Because actuarial material combining two separate crop insurance plans was delayed in reaching the agents responsible for marketing new and existing contracts, FCIC is extending the sales closing date in that state.

Under the provisions of 7 CFR 436.7, the sales closing date for accepting applications may be extended by placing the extended date on file in the service office and by publishing a notice in the **Federal Register** upon determination that no adverse selectivity will result from such extension. If adverse conditions develop during such period, FCIC will immediately discontinue acceptance of applications.

Notice

Accordingly, pursuant to the authority contained in 7 CFR 436.7, the Federal Crop Insurance Corporation herewith gives notice that the sales closing date for accepting applications for tobacco crop insurance in North Carolina is hereby extended through the close of business on April 15, 1986, effective for the 1986 crop year only.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Done in Washington, DC, on March 27, 1986.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 86–7253 Filed 4–1–86; 8:45 am]

BILLING CODE 3410–08–M

7 CFR Part 444

[Doc. No. 0080A]

Fresh Tomato Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Fresh Tomato Crop Insurance Regulations (7 CFR Part 444), effective for the 1987 and succeeding crop years. The intended effect of this rule is to: (1) add excessive rain as an insurable cause of loss; (2) change the method of calculating the insured's share of an indemnity on crops transferred before harvest; (3) clarify that acreage will not be insured when planted with another crop; (4) allow insurance on tomatoes not grown on plastic mulch; (5) remove the Premium Adjustment Table; (6) change the method of crediting the replanting payment; (7) add a provision to specify that coverage terminates after a specified period; (8) increase the time an insured has to give notice when claiming an indemnity; (9) add a provision that notice of loss is to be given within 72 hours after a specified period; (10) change the method of computing indemnities when acreage, share, or practice is underreported; (11) change the method for calculating production to count on harvested and appraised production; (12) establish the minimum value for harvested and appraised production; (13) increase the amount of acreage which must be replanted to obtain replanting payments; and (14) add definitions for "Excessive rain", "Freeze", "Frost", "Loss ratio", "Potential production", and "Tropical depression". The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: April 30, 1986.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Department Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is December 1, 1990.

Merritt W. Sprague, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Thursday, February 13, 1986, FCIC published a Notice of Proposed Rulemaking in the **Federal Register** at 51 FR 5345, to revise and reissue the Fresh Tomato Crop Insurance Regulations (7 CFR Part 444), effective for the 1987 and succeeding crop years. The public was given 30 days in which to submit written comments on the proposed rule. One comment was received from the Florida Farm Bureau Federation expressing their concern on the addition of excessive rain as an insurable cause of loss and the method of crediting the replanting payment as follows:

1. *Comment:* FCIC should not add excessive rain as an insurable cause of loss in Section 1.a.(1). The U.S. Weather Bureau only gathers data at locations where certified equipment exists and would not be able to gather information on the total exact amount of rainfall on each individual farm in an area. The commenter contends that such provision would skew the actuarial accuracy of the program.

FCIC response: The addition of excessive rain as an insurable cause of loss was to give growers protection for a risk present in growing fresh tomatoes. Growers have advised FCIC that they are prepared to handle normal amounts of rain but not excessive amounts. It is true that verification of 10 inches of rain on a specific field may be difficult although there are several U.S. Weather Bureau locations in the tomato area. Even if a rain gauge is present on the grower's field, the amount cannot be guaranteed because of possible tampering. There may be a subjective judgment in the establishment of what constitutes excessive moisture in certain situations, but use of well-trained loss adjustment contractors limits the possibility of an improper determination of this cause of loss. This provision, therefore, is unchanged.

2. *Comment:* The commenter states that after a replanting payment has been made, the insured should be required to suffer another loss in order to collect an indemnity. The commenter further suggests that the grower not receive additional indemnity because of loss is caused by a late replanting and a falling market.

FCIC response: Replanting is a method of reducing the Corporation's possible loss by paying a relatively small replanting payment in place of paying the indemnity on a loss. If replanting results in a loss because it causes late harvest or low production, that loss is still a result of the original cause of loss and should be compensated for under the insurance contract. The Corporation has established final planting dates which theoretically allow the producer to harvest a crop without an insured loss. If a loss occurs because of late planting, it does not occur because of an insurable cause of loss and should not result in the payment of an indemnity. A loss is payable only if it results from a covered cause of loss.

Tomato harvest which occurs toward the end of a specific growing period either because of replanting a damaged crop or an initial late planting resulted in selling the crop under depressed market price conditions. Combining these marketing conditions with insurable damage caused exaggerated indemnities. The indemnity is computed by substracting the value of harvested and appraised production from the amount of insurance. The value of harvested and appraised production equals the market price per carton less allowable costs times the quantity of total production. In the 1984-85 crop years, the indemnity was not always proportional to the actual quantity and quality of production lost when the market price was below average,

especially when all the production is harvested. If the market price per carton of harvested tomatoes is depressed enough, that price less the allowable costs could under the 1985 policy result in a negative value. It is evident under these circumstances, that a value of total production to count even if production is harvested of zero is possible (negative values of total production to count are not allowed). The actual tomato production could have been of sufficient quantity and quality that, were more favorable markets available, a significant value of production to count would have been established and the indemnity eliminated or reduced. When the situation described above exists, harvesting a tomato crop where the costs of harvest exceeded the market value of the crop, growers were encouraged to harvest in order to collect a total indemnity. For this reason, the policy was changed.

The 1986 policy addresses this loss of value to count due to market prices. The policy provision provides a minimum value per carton ($3.00) which is to be used when the value per carton less allowable costs falls below that level. Market price conditions will no longer result in or unreasonably increase the amount of indemnity when marketable tomato production exists.

This provision remains unchanged.

The Notice of Proposed Rulemaking defined "ASCS". This was in error and has been removed from the definition section in this final rule. Because the crop is not under the Actual Production History (APH) program requiring the involvement of ASCS, there is no need for this definition. Also, the definition of "County" has been changed. The proposed rule identified "County" to include a definition of land identified by an ASCS farm serial number. For the reasons stated above, this reference has been removed in the final rule.

Therefore, with the exception of minor changes in language and format, the proposed rule, as discussed above, is adopted as a final rule. The principal changes in the fresh tomato policy are:

1. *Section 1.*—Add excessive rain as an insurable cause of loss. This provides for coverage for rain damage when more than 10 inches of rain falls in a twenty-four hour period.

2. *Section 2.*—Add a clause to change the method of calculating the insured's share of an indemnity on crops transferred before harvest. This limits indemnities to the insurable interest at the time of loss.

Add a provision to allow FCIC to insure tomatoes in specified areas which are not grown on plastic mulch. Good cultural practices do not always require plastic mulch.

Specify that acreage will not be insured when planted with another crop. This change is made to be consistent with other policies.

3. *Section 5.*—Remove the Premium Adjustment Table. The Premium Adjustment Table was removed for actuarial purposes. The Federal Crop Insurance Act requires that premiums be established to pay anticipated losses and establish a reasonable reserve. Discounting premiums established in accordance with the Act is not a sound actuarial practice and FCIC has discontinued the practice.

Remove the provisions for the transfer of insurance experience and for premium computation when participation has not been continuous. Deletion of the Premium Adjustment Table eliminates the need for these provisions.

4. *Section 6.*—Specify that the replanting payment will only be applied to payment of the premium if the billing date has passed. In cases when the billing date for a crop has passed on the date replanting payment is made, the replanting payment will be applied to payment of the billed premium. In other cases it will be paid to the insured. This changes the current practice of applying the replanting payment to the outstanding premium in all cases.

5. *Section 7.*—Add a provision to specify that coverage terminates and will not pay for damage occurring 140 days or more after the date of direct seeding, transplanting or replanting. Tomatoes should be harvested within 140 days of establishment. Damage occurring after that date will not be covered.

6. *Section 8.*—Increase from 48 to 72 hours the length of time an insured has to give notice of loss when claiming an indemnity. This change allows the insured to give timely notice when damage occurs over weekends and during periods of intense activity.

Add a provision for notice of loss after the end of the 140 day insurance period. This change allows for an inspection to determine potential production remaining on plants not harvested.

7. *Section 9.*—When acres are underreported, the production from all acres will count against the reported acres in calculating indemnities. This change will reduce the amount of indemnities when acres are underreported and will reduce the complexity of calculations.

Change the method of computing the total value of production to be counted for a unit on harvested and appraised production when claiming an indemnity.

Add a provision to establish that the value of any appraised production will not be less than the dollar amount obtained by multiplying the number of 25-pound cartons of tomatoes appraised by $3.00. Indemnities have been paid after an insurable cause of loss occurred, when production was normal, but the prices were low. Also, marketing of produciton, part of which proves rotten and is destroyed, has resulted in a minus value after deduction of allowable costs from the price received. The result has been a devaluation of the production actually marketed and an inflated indemnity.

Establishing a minimum price for marketed and appraised production returns the coverage to a production guarantee program and reduces the possibility that FCIC may pay indemnity when production is normal. It also removes the tendency to insure market prices. Since the price on a normal crop when harvested ordinarily exceeds the insurance amount, the $3.00 amount represents the point at which the dollar amount of insurance on appraised production of a given number of units will zero out. This change also simplifies the method of determining value and informs the insured of the minimal value of appraised production.

Increase from 10 acres or 10 percent to 20 acres or 20 percent the acreage required to be replanted to qualify for a replant payment. Clarify that the percentage to be replanted is computed on the acreage initially planted on the unit as of the final planting date. Delete the requirement that the payment be considered an indemnity except for minor coverage requirements. This reduces the number of inspections by eliminating small replant payments and paperwork.

8. *Section 17.*—Add definitions of "Excessive rain", "Freeze", "Frost", "Loss ratio", "Potential production", and "Tropical depression."

Since policy changes must be on file by April 30, 1986, good cause is shown for making this rule effective in less than 30 days.

List of Subjects in 7 CFR Part 444

Crop insurance, Fresh tomato.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises and reissues the Fresh Tomato Crop Insurance Regulations (7 CFR Part 444), effective for the 1987 and

succeeding crop years, to read as follows:

PART 444—FRESH TOMATO CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1987 and Succeeding Crop Years

Sec.
444.1 Availability of fresh tomato crop insurance.
444.2 Premium rates, coverage levels, and amounts of insurance.
444.3 OMB control numbers.
444.4 Creditors.
444.5 Good faith reliance on misrepresentation.
444.6 The contract.
444.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1987 and Succeeding Crop Years

§ 444.1 Availability of fresh tomato crop insurance.

Insurance shall be offered under the provisions of this subpart on fresh tomatoes in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 444.2 Premium rates, coverage levels, and amounts of insurance.

(a) The Manager shall establish pemium rates, coverage levels, and amounts of insurance for fresh tomatoes which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect an amount of insurance per acre and a coverage level from among those levels and amounts set by the actuarial table for the crop year.

§ 444.3 OMB control numbers.

OMB control numbers are contained in Subpart H of Part 400, Title 7 CFR.

§ 444.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 444.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the fresh tomato crop insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00 finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

§ 444.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the fresh tomato crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 444.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation must be made by any person to cover such person's share in the fresh tomato crop as landlord, owner-operator, or tenant if the person wishes to participate in the program. The application shall be submitted to the Corporation at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the sales closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1987 and succeeding crop years, a contract in the form provided for under this subpart will come into effect as a continuation of a fresh tomato insurance contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1987 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Fresh Tomato Crop Insurance Policy for the 1987 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Fresh Market Tomato—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Excessive rain;
(2) Frost;
(3) Freeze;
(4) Hail;
(5) Fire;
(6) Tornado;
(7) Tropical depression; or
(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9.e.(5).

b. We will not insure against any loss of production due to:

(1) Disease or insect infestation;

(2) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;

(3) The failure to follow recognized good tomato farming practices;

(4) The impoundment of water by any governmental, public, or private dam or reservoir project;

(5) The failure or breakdown of irrigation equipment or facilities;

(6) The failure to follow recognized good tomato irrigation practice; or

(7) Any cause not specified in section 1.a. as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be tomatoes (excluding cherry-type tomatoes) planted for harvest as fresh market tomatoes, grown on insured acreage, and for which an amount of insurance and premium rate are set by the actuarial table.

b. The acreage insured for each crop year will be tomatoes planted on irrigated acreage as designated insurable by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured tomatoes at the time of each planting period. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

(1) The time of loss; or

(2) The beginning of harvest.

d. We do not insure any acreage of tomatoes grown by any person if the person had not previously:

(1) Grown tomatoes for commercial sales; or

(2) Participated in the management of the tomato farming operation.

e. We do not insure any acreage:

(1) Of tomatoes grown for direct consumer marketing;

(2) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(3) Which is not irrigated;

(4) On which tomatoes are not grown on plastic mulch unless provided for by the actuarial table;

(5) On which tomatoes, peppers, eggplants or tobacco have been grown and the soil was not fumigated or otherwise properly treated before planting tomatoes;

(6) Which was planted to tomatoes the preceding planting period, unless the tomato plants of the preceding planting period were destroyed less than:

(a) 30 days after the date of transplanting; or

(b) 60 days after the date of direct seeding;

(7) Which is destroyed, it is practical to replant to tomatoes, and such acreage is not replanted (the unavailability of plants is not a valid reason for failure to replant);

(8) Initially planted after the final planting date set by the actuarial table;

(9) Of volunteer tomatoes;

(10) Planted to a type or variety of tomatoes not established as adapted to the area or excluded by the actuarial table;

(11) Planted for experimental purposes; or

(12) Planted with another crop.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report at the time of each planting period on our form:

a. All the acreage of fall, winter, and spring-planted tomatoes in the county in which you have a share;

b. The practice, including the bed size; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any tomato plantings in the county. This report must be submitted for each planting period on or before the reporting date established by the actuarial table for each planting period. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine, by unit, for each planting period the insured acreage, share, and practice or we may deny liability on any unit for any planting. Any report submitted by you may be revised only upon our approval.

4. Coverage levels and amounts of insurance.

a. The coverage levels and amounts of insurance are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and amount of insurance on or before the sales closing date set by the actuarial table for submitting applications for the crop year.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the amount of insurance times the premium rate, times the insured acreage, times your share at the time of each planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you, or from a replanting payment if the billing date has passed on the date you claim the replanting payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the tomatoes are planted in each planting period and ends at the earliest of:

a. Total destruction of the tomatoes on the unit;

b. Discontinuance of harvest of tomatoes on the unit;

c. The date harvest should have started on the unit on any acreage which will not be harvested;

d. 140 days after the date of direct seeding, transplanting or replanting;

e. Final harvest; or

f. Final adjustment of a loss.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant tomatoes damaged due to any insured cause (see subsection 9.f.);

(b) During the period before harvest, the tomatoes on any unit are damaged and you decide not to further care for or harvest any part of them;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the tomatoes and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is determined within 15 days prior to or during harvest and you are going to claim an indemnity on any unit, you must give us notice not later than 72 hours after the earliest of:

(a) Total destruction of the tomatoes on the unit;

(b) Discontinuance of harvest of any acreage on the unit;

(c) The date harvest would normally start if any acreage on the unit is not to be harvested; or

(d) 140 days after the direct seeding, transplanting, or replanting of the tomatoes (see section 7).

b. You may not destroy or replant any of the tomatoes on which a replanting payment will be claimed until we give written consent.

c. You must obtain written consent from us before you destroy any of the tomatoes which are not to be harvested.

d. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for indemnity.

(a). Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the tomatoes on the unit;

(2) Discontinuance of harvesting on the unit; or

(3) The date harvest should have started on the unit on any acreage which will not be harvested.

b. We will not pay any indemnity unless you:

(1) Establish the total production and the value received for all tomatoes on the unit and that any loss of production or value has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the amount of insurance times the percentage for the stage of production defined by the actuarial table;

(2) Subtracting therefrom the total value of production to be counted (see subsection 9.e.); and

(3) Multiplying this result by your share.

d. If the information reported by you under section 3 of this policy results in a lower premium than the actual premium determined to be due, the amount of insurance on the unit will be computed on the information reported, but the value of all production from insurable acreage, whether or not reported as insurable, will count against the amount of insurance.

e. The total value of production to be counted for a unit will include all harvested and appraised production.

(1) The total value of harvested production will be the greater of:

(a) The dollar amount obtained by multiplying the number of 25-pound cartons of tomatoes harvested on the unit by $3.00; or

(b) The dollar amount obtained by multiplying the number of 25-pound cartons of tomatoes sold by the price received minus allowable cost set by the actuarial table. However, such price must not be less than zero for any carton.

(2) The value of appraised production to be counted will include:

(a) The value of the potential production on any tomatoes that have not been harvested the third time and the value of unharvested production of mature green and ripe tomatoes with classification size of 7 x 7 (2$^{5}/_{32}$ inch minimum diameter) or larger remaining after the third harvest;

(b) The value of the potential production lost due to uninsured causes; and

(c) Not less than the dollar amount of insurance per acre for any acreage abandoned or put to another use without prior written consent or which is damaged solely by an uninsured cause.

The value of any appraised production will not be less than the dollar amount obtained by multiplying the number of 25-pound cartons of tomatoes appraised by $3.00.

(3) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of tomatoes becomes general in the county for the planting period and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

(4) The amount and value of production of any unharvested tomatoes may be determined on the basis of field appraisals conducted after the end of the insurance period.

(5) If you elect to exclude hail and fire as insured causes of loss and the tomatoes are damaged by hail or fire, appraisals will be made in accordance with Form FCI–78–A, "Request to Exclude Hail and Fire."

f. A replanting payment may be made on any insured tomatoes replanted after we have given consent and the acreage replanted is at least the lesser of 20 acres or 20 percent of the insured acreage as determined on the final planting data for the planting period. The acreage to be replanted must have sustained a loss in excess of 50 percent of the plant stand for the unit.

(1) No replanting payment will be made on acreage on which a replanting payment has been made during the current planting period for the crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting, but will not exceed the product obtained by multiplying $175.00 per acre by your share.

If the information reported by you results in a lower premium than the actual premium determined to be due, the replanting payment will be reduced proportionately.

g. You must not abandon any acreage to us.

h. Any suit against us for an indemnity must be brought in accordance with the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial of the claim is received by you.

i. An indemnity will not be paid unless you comply with all policy provisions.

j. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semiannually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

k. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the tomatoes are planted for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

l. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment of fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all tomatoes produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity, will be the date you sign the claim; or

(2) Payment under another program administered by the United States Department of Agriculture, will be the date both such other payment and setoff are approved.

d. The cancellation and termination dates are July 31.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof.

Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your amount of insurance at which indemnities are computed is no longer offered, the actuarial table will provide the amount of insurance which you are deemed to have elected. All contract changes will be available at your service office by April 30 preceding the cancellation date. Acceptance of changes will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of tomato crop insurance:

a. "Acre" means 43,560 square feet of plastic mulch (or the equivalent growing area) of not more than 6 foot widths (6-foot bed) on which at least 7,260 linear feet (rows) are planted.

b. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the amount of insurance, coverage levels, premium rates, practices, insurable and uninsurable acreage, and related information regarding tomato insurance in the county.

c. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

d. "Crop year" means the period within which the tomatoes are normally grown beginning August 1 and continuing through the harvesting of the spring-planted tomatoes and is designated by the calendar year in which the spring-planted tomatoes are normally harvested.

e. "Excessive rain" means more than 10 inches of rain on the tomato field within a 24-hour period, after the tomatoes have been seeded or transplanted.

f. "Freeze" means the condition of air temperatures over a widespread area remaining sufficiently at or below 32 degrees Fahrenheit to cause crop damage.

g. "Frost" means the condition of air temperature around the plant falling to 32 degrees Fahrenheit or below.

h. "Harvest" means the picking of marketable tomatoes on the unit.

i. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

j. "Insured" means the person who submitted the application accepted by us.

k. "Loss ratio" means the ratio of indemnity to premium.

l. "Mature green tomato" means a tomato which:

(1) Has heightened gloss because of the waxy skin that cannot be torn by scraping;

(2) Has well formed jelly-like substance in the locules;

(3) Has seeds that are sufficiently hard so they are pushed aside and not cut by a sharp knife in slicing; and

(4) Shows no red color.

m. "Person" means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision or agency of a State.

n. "Planting" means transplanting the tomato plants into the field or direct seeding in the field.

o. "Planting period" means tomatoes planted within the dates set by the actuarial table, as fall-planted, winter-planted or spring-planted.

p. "Plant stand" means the number of live plants per acre before the plants were damaged due to insurable causes.

q. "Potential production" means the number of 25-pound cartons of mature green or ripe tomatoes with classification size of 7 × 7 (2$\frac{13}{32}$ inch minimum diameter) or larger which the tomato plants would produce or would have produced, per acre, by the end of the insurance period.

r. "Replanting" means performing the cultural practices necessary to replant insured acreage to tomatoes.

s. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

t. "Tenant" means a person who rents land from another person for a share of the tomatoes or a share of the proceeds therefrom.

u. "Tomatoes grown for direct consumer marketing" means tomatoes grown for the purpose of selling directly to the consumer; and which are grown on acreage not subject to an agreement between producer and packer to pack the production (the producer-packer agreement must be executed before you report your acreage).

v. "Tropical depression" means only a large-scale, atmospheric wind-and-pressure system characterized by low pressure at its center and counterclockwise circular wind motion which has been identified by the United States Weather Service in which the minimum sustained surface wind (1-minute mean) is 33 knots (38 miles per hour) or more at the U.S. Weather Service reporting station nearest to the crop damage at the time of loss.

w. "Unit" means all insurable acreage of tomatoes for each planting period in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the tomatoes on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to by your bona fide share or the bona fide share of any person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with the Appeal Regulations (7 CFR Part 400—Subpart J).

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, DC, on March 18, 1986.

Michael Bronson,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 86-7272 Filed 4-1-86; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 445

[Docket No. 0079A]

Pepper Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Pepper Crop Insurance Regulations (7 CFR Part 445), effective for the 1987 and succeeding crop years. The intended effect of this rule is to: (1) Add excessive rain as an insurable cause of loss; (2) change the method of calculating the insured's share of an indemnity on crops transferred before harvest; (3) clarify that acreage will not be insured when planted with another crop; (4) remove the Premium Adjustment Table; (5) change the method of crediting the replanting payment; (6) add a provision to specify that coverage terminates after a specified period; (7) increase the length

of time an insured has to give notice of loss when claiming an indemnity; (8) add a provision that notice of loss is to be given within 72 hours after a specified period; (9) change the method of computing indemnities when acreage, share, or practice is underreported; (10) change the method for calculating production to count on harvested and appraised production; (11) establish the minimal value for harvested and appraised production; (12) increase the amount of acreage which must be replanted to obtain replanting payments; and (13) add definitions of "Excessive rain", "Freeze", "Frost", "Loss ratio", "Potential production", and "Tropical depression". The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: April 30, 1986.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is December 1, 1990.

Merritt W. Sprague, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Thursday, February 13, 1986, FCIC published a Notice of Proposed Rulemaking in the **Federal Register** at 51 FR 5351, to revise and reissue the Pepper Crop Insurance Regulations (7 CFR Part 445), effective for the 1987 and succeeding crop years. The public was given 30 days in which to submit written comments on the proposed rule. One comment was received from the Florida Farm Bureau Federation expressing their concern on the addition of excessive rain as an insurable cause of loss and the method of crediting the replanting payment as follows:

1. *Comment:* FCIC should not add excessive rain as an insurable cause of loss in Section 1.a.(1). The U.S. Weather Bureau only gathers data at locations where certified equipment exists and would not be able to gather information on the total exact amount of rainfall on each individual farm in the area. The commenter contends that such provision would skew the actuarial accuracy of the program.

FCIC response: The addition of excessive rain as an insurable cause of loss was to give growers protection for a risk present in growing peppers. Growers have advised FCIC that they are prepared to handle normal amounts of rain but not excessive amounts. It is true that verification of 10 inches of rain on a specific field may be difficult, although there are several U.S. Weather Bureau locations in the production area. Even if a rain gauge is present on the grower's field, the amount cannot be guaranteed because of possible tampering. There may be a subjective judgment in the establishment of what constitutes excessive moisture in certain situations, but use of well-trained loss adjustment contractors limits the possibility of an improper determination of this cause of loss. This provision, therefore, is unchanged.

2. *Comment:* The commenter states that after a replanting payment has been made, the insured should be required to suffer another loss in order to collect an indemnity. The commenter further suggests that the grower not receive additional indemnity because a loss is caused by a late replanting and a falling market.

FCIC response: Replanting is a method of reducing the Corporation's possible loss by paying a relatively small replanting payment in place of paying the indemnity on a loss. If replanting results in a loss because it causes late harvest or low production, that loss is still a result of the original cause of loss and should be compensated for under the insurance contract. The Corporation has established final planting dates which theoretically allow the producer to harvest a crop without an insured loss. If a loss occurs because of late planting, it does not occur because of an insurable cause of loss and should not result in the payment of an indemnity. A loss is payable only if it results from a covered cause of loss.

Pepper harvest which occurs toward the end of a specific growing period either because of replanting a damaged crop or an initial late planting resulted in selling the crop under depressed market price conditions.

Combining these marketing conditions with insurable damage caused exaggerated indemnities. The indemnity is computed by subtracting the value of harvested and appraised production from the amount of insurance. The value of harvested and appraised production equals the market price per carton less allowable costs times the quantity of total production. In the 1984–85 crop years, the indemnity was not always proportional to the actual quantity and quality of production lost when the market price was below average, especially when all the production is harvested. If the market price per carton of harvested peppers is depressed enough, that price less the allowable costs could under the 1985 policy result in a negative value. It is evident under these circumstances, that a value of total production to count of zero is possible even if production is harvested (negative values of total production to count are not allowed). The actual pepper production could have been of sufficient quantity and quality that, were more favorable markets available, a significant value of production to count would have been established and the indemnity eliminated or reduced. When the situation described above exists, harvesting a pepper crop where the costs of harvest exceeded the market value of the crop, growers were encouraged to harvest in order to collect a total indemnity. For this reason, the policy was changed.

The 1986 policy addresses this loss of value of count due to market prices. The policy provision provides a minimum value per carton ($4.00) which is to be used when the value per carton less allowable costs falls below that level. Market price conditions will no longer

result in or unreasonably increase the amount of indemnity when marketable pepper production exists.

This provision remains unchanged.

The Notice of Proposed rulemaking defined "ASCS". This was in error and has been removed from the definition section in this final rule. Because the crop is not under the Actual Production History (APH) program requiring the involvement of ASCS, there is no need for this definition. Also, the definition of "County" has been changed. The proposed rule identified "County" to include a definition of land identified by an ASCS farm serial number. For the reasons stated above, this reference has been removed in the final rule.

Therefore, with the exception of minor changes in language and format, the proposed rule, as discussed above, is adopted as a final rule. The principal changes in the pepper policy are:

1. *Section 1.*—Add excessive rain as an insurable cause of loss. This provides for rain damage coverage when more than 10 inches of rain falls in a twenty-four hour period.

2. *Section 2.*—Add a clause to change the method of calculating the insured's share of an indemnity on crops transferred before harvest. This limits indemnities to the insurable interest at the time of loss.

Specify that acreage will not be insured when planted with another crop. This change is made to be consistent with other policies.

3. *Section 5.*—Remove the Premium Adjustment Table. The Premium Adjustment Table was removed for actuarial purposes. The Federal Crop Insurance Act requires that premiums be established to pay anticipated losses and establish a reasonable reserve. Discounting premiums established in accordance with the Act is not a sound actuarial practice and FCIC has discontinued the practice.

Remove the provisions for the transfer of insurance experience and for premium computation when participation has not been continuous. Deletion of the Premium Adjustment Table eliminates the need for these provisions.

4. *Section 6.*—Specify that the replanting payment will only be applied to payment of the premium if the billing date has passed. In cases when the billing date for a crop has passed on the date replanting payment is made, the replanting payment will be applied to payment of the billed premiums. In other cases it will be paid to the insured. This changes the current practice of applying the replanting payment to the outstanding premium in all cases.

5. *Section 7.*—Add a provision to specify that coverage terminates and will not cover damage occurring 150 days or more after the date of direct seeding, transplanting or replanting. Peppers should be harvested within 150 days of establishment. Damage occurring after that date will not be covered.

6. *Section 8.*—Increase from 48 to 72 hours the length of time an insured has to give notice of loss when claiming an indemnity. This change allows the insured to give timely notice when damage occurs over a weekend and during periods of intense activity.

Add a provision for notice of loss after the end of the 150 day insurance period. This change allows for an inspection to determine potential production remaining on plants not harvested.

7. *Section 9.*—When acres are underreported, the production from all acres will count against the reported acres in calculating indemnities. This change will reduce the amount of indemnities when acres are underreported and will reduce the complexity of calculations.

Change the method of computing the total value of production to be counted for a unit on harvested and appraised production when claiming an indemnity.

Add a provision to establish that the value of any appraised production will not be less than the dollar amount obtained by multiplying the number of 1⅙ bushels appraised by $4.00. Indemnities have been paid after an insurable cause of loss occurred, when production was normal, but the prices were low. Also, marketing of production, part of which may be rotten and must be destroyed, has resulted in a minus value after deduction of allowable costs from the price received. The result has been a devaluation of the production actually marketed and an inflated indemnity. Establishing a minimum price for marketed and appraised production returns the coverage to a production guarantee program and reduces the possibility that FCIC may pay indemnity when production is normal. It also removes the tendency to insure market prices.

Since the price on a normal crop when harvested ordinarily exceeds the insurance amount, the $4.00 amount represents the point at which the dollar amount of insurance on appraised production of a given number of units will zero out. This change also simplifies the method of determining value and informs the insured of the minimal value of appraised production.

Increase from 10 acres or 10 percent to 20 acres or 20 percent the acreage required to be replanted to qualify for a replant payment. Clarify that the percentage to be replanted is computed on the acreage initially planted on the unit as of the final planting date. Delete the requirement that the payment be considered an indemnity except for minor coverage requirements. This reduces the number of inspections by eliminating small replant payments and paperwork.

8. *Section 17.*—Add definitions of "Excessive rain", "Freeze", "Frost", "Loss ratio", "Potential production", and "Tropical depression."

Since policy changes must be on file by April 30, 1986, good cause is shown for making this rule effective in less than 30 days.

List of Subjects in 7 CFR Part 445

Crop insurance, Pepper.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises and reissues the Pepper Crop Insurance Regulations (7 CFR Part 445), effective for the 1987 and succeeding crop years, to read as follows:

PART 445—PEPPER CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1987 and Succeeding Crop Years

Sec.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1987 and Succeeding Crop Years

§ 445.1 Availability of pepper crop insurance.

Insurance shall be offered under the provisions of this subpart on peppers in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 445.2 Premium rates, coverage levels, and amounts of insurance.

(a) The Manager shall establish premium rates, coverage levels, and amounts of insurance for peppers which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect an amount of insurance per acre and a coverage level from among those levels and amounts set by the actuarial table for the crop year.

§ 445.3 OMB control numbers.

OMB control numbers are contained in Subpart H of Part 400, Title 7 CFR.

§ 445.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 445.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the pepper crop insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00 finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

§ 445.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the pepper crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 445.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation must be made by any person to cover such person's share in the pepper crop as landlord, owner-operator, or tenant if the person wishes to participate in the program. The application shall be submitted to the Corporation at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the sales closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1987 and succeeding crop years, a contract in the form provided for under this subpart will come into effect as a continuation of a pepper insurance contract issued under such regulations, without the filing of a new application.

(d) The application for the 1987 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Pepper Crop Insurance Policy for the 1987 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Pepper—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Excessive rain;

(2) Frost;

(3) Freeze;

(4) Hail;

(5) Fire;

(6) Tornado;

(7) Tropical depression; or

(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting; unless those causes are excepted, excluded, or limited by the actuarial table or section 9.e.(6).

b. We will not insure against any loss of production due to:

(1) Disease or insect infestation;

(2) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;

(3) The failure to follow recognized good pepper farming practices;

(4) The impoundment of water by any governmental, public, or private dam or reservoir project;

(5) The failure or breakdown of irrigation equipment or facilities;

(6) The failure to follow recognized good pepper irrigation practice; or

(7) Any cause not specified in section 1.a. as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be peppers planted for harvest as fresh market peppers, grown on insured acreage, and for which an amount of insurance and premium rate are set by the actuarial table.

b. The acreage insured for each crop year will be peppers planted on irrigated acreage as designated insurable by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured peppers at the time of each planting period. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

(1) The time of loss; or

(2) The beginning of harvest.

d. We do not insure any acreage of peppers grown by any person if the person had not previously:

(1) Grown peppers for commercial sales; or

(2) Participated in the management of the pepper farming operation.

e. We do not insure any acreage:

(1) Of peppers grown for direct consumer marketing;

(2) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(3) Which is not irrigated;

(4) On which peppers are not grown on plastic mulch unless provided for by the actuarial table;

(5) On which tomatoes, peppers, eggplants or tobacco have been grown and the soil was not fumigated or otherwise properly treated before planting peppers;

(6) Which was planted to peppers the preceding planting period, unless the pepper plants of the preceding planting period were destroyed less than:

(a) 30 days after the date of planting; or

(b) 60 days after the date of direct seeding;

(7) Which is destroyed, it is practical to replant to peppers, and such acreage is not replanted (the unavailability of plants is not a valid reason for failing to replant);

(8) Initially planted after the final planting date set by the actuarial table;

(9) Of volunteer peppers;

(10) Planted to a type or variety of peppers not established as adapted to the area or excluded by the actuarial table;

(11) Planted for experimental purpose; or

(12) Planted with another crop.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report at the time of each planting period on our form:

a. All the acreage of fall, winter and spring-planted peppers in the county in which you have a share;

b. The practice, including the bed size; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any pepper plantings in the county. This report must be submitted for each planting period on or before the reporting date established by the actuarial table for each planting period. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine, by unit, for each planting period, the insured acreage, share, and practice or we may deny liability on any unit for any planting. Any report submitted by you may be revised only upon our approval.

4. Coverage levels and amounts of insurance.

a. The coverage levels and amounts of insurance are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and amount of insurance on or before the sales closing date set by the actuarial table for submitting applications for the crop year.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the amount of insurance, times the premium rate, times the insured acreage, times your share at the time of each planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you, or from a replanting payment if the billing date has passed on the date you are paid the replanting payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the peppers are planted in each planting period and ends at the earliest of:

a. Total destruction of the peppers on the unit;

b. Discontinuance of harvest of peppers on the unit;

c. The date harvest should have started on the unit on any acreage which will not be harvested;

d. 150 days after the date of direct seeding, transplanting or replanting;

e. Final harvest; or

f. Final adjustment of loss.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant peppers damaged due to any insured cause (see subsection 9.f.);

(b) During the period before harvest, the peppers on any unit are damaged and you decide not to further care for or harvest any part of them;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use in given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the peppers and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is determined within 15 days prior to or during harvest and you are going to claim an indemnity on any unit, you must give us notice not later than 72 hours after the earliest of:

(a) Total destruction of the peppers on the unit;

(b) Discontinuance of harvest of any acreage on the unit;

(c) The date harvest would normally start if any acreage on the unit is not to be harvested; or

(d) 150 days after the direct seeding, transplanting or replanting of the peppers (see section 7).

b. You may not destroy or replant any of the peppers on which a replanting payment will be claimed until we give written consent.

c. You must obtain written consent from us before you destroy any of the peppers which are not to be harvested.

d. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the peppers on the unit;

(2) Discontinuance of harvesting on the unit; or

(3) The date harvest should have started on the unit on any acreage which will not be harvested.

b. We will not pay any indemnity unless you:

(1) Establish the total production and the value received for all peppers on the unit and that any loss of production or value has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the amount of insurance times the percentage for the state of production defined by the actuarial table;

(2) Subtracting therefrom the total value of production to be counted (see subsection 9.e.); and

(3) Multiplying this result by your share.

d. If the information reported by you under section 3 of this policy results in a lower premium than the actual premium determined to be due, the amount of insurance on the unit will be computed on the information reported, but the value of all production from insurable acreage, whether or not reported as insurable, will count against the amount of insurance.

e. The total value of production to be counted for a unit will include all harvested and appraised production.

(1) The total value of harvested production will be the greater of:

(a) The dollar amount obtained by multiplying the number of 1⅑ bushels of peppers harvested on the unit by $4.00; or

(b) The dollar amount obtained by multiplying the number of 1⅑ bushels of peppers sold by the price received for each 1⅑ bushel of peppers minus allowable cost set by the actuarial table. However, such price must not be less than zero for any 1⅑ bushel.

(2) The value of appraised production to be counted will include:

(a) The value of the potential production on any peppers that have not been harvested the third time and the value of unharvested mature green and red peppers;

(b) The value of the potential production lost due to uninsured causes; and

(c) Not less than the dollar amount of insurance per acre for any acreage abandoned or put to another use without our prior written consent or which is damaged solely by an uninsured cause.

The value of any appraised production will not be less than the dollar amount obtained

by multiplying the number of 1⅛ bushels of peppers appraised by $4.00.

(3) Unharvested peppers damaged or defective due to insurable causes and which cannot be marketed will not be counted as production.

(4) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of peppers becomes general in the county for the planting period and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

(5) The amount and value of production of any unharvested peppers may be determined on the basis of field appraisals conducted after the end of the insurance period.

(6) If you elect to exclude hail and fire as insured causes of loss and the peppers are damaged by hail or fire, appraisals will be made in accordance with Form FCI–78–A, "Request to Exclude Hail and Fire."

f. A replanting payment may be made on any insured peppers replanted after we have given consent and the acreage replanted is at least the lesser of 20 acres or 20 percent of the insured acreage as determined on the final planting date for the planting period. The acreage to be replanted must have sustained a loss in excess of 50 percent of the plant stand for the unit.

(1) No replanting payment will be made on acreage on which a replanting payment has been made during the current planting period for the crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting, but will not exceed the product obtained by multiplying $300.00 per acre by your share.

If the information reported by you results in a lower premium than the actual premium determined to be due, the replanting payment will be reduced proportionately.

g. You must not abandon any acreage to us.

h. Any suit against us for an indemnity must be brought in accordance with the provisions of 7 U.S.C 1508(c). You must bring suit within 12 months of the date notice of denial of the claim is received by you.

i. An indemnity will not be paid unless you comply with all policy provisions.

j. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semiannually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

k. If you die, disappear or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the peppers are planted for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

l. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all peppers produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity, will be the date you sign the claim; or

(2) Payment under another program administered by the United States Department of Agriculture, will be the date both such payment and setoff are approved.

d. The cancellation and termination dates are July 31.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise.

If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your amount of insurance at which indemnities are computed is no longer offered, the actuarial table will provide the amount of insurance which you are deemed to have elected. All contract changes will be available at your service office by April 30 preceding the cancellation date. Acceptance of changes will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of pepper crop insurance:

a. "Acre" means 43,560 square feet of plastic mulch or equivalent row area of not more than 6 foot widths (6-foot bed) on which at least 7,260 linear feet (rows) are planted.

b. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the amount of insurance, coverage levels, premium rates, practices, insurable and uninsurable acreage, and related information regarding pepper insurance in the county.

c. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

d. "Crop year" means the period within which the peppers are normally grown beginning August 1 and continuing through the harvesting of the spring-planted peppers and is designated by the calendar year in which the spring-planted peppers are normally harvested.

e. "Excessive rain" means more than 10 inches of rain on the pepper field within a 24-hour period, after the peppers have been seeded or transplanted.

f. "Freeze" means the condition of air temperatures over a widespread area remaining sufficiently at or below 32 degrees Fahrenheit to cause crop damage.

f. "Frost" means the condition of air temperature around the plant falling to 32 degrees Fahrenheit or below.

h. "Harvest" means the final picking of marketable peppers on the unit.

i. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

j. "Insured" means the person who submitted the application accepted by us.

k. "Loss ratio" means the ratio of indemnity to premium.

l. "Mature green pepper" means a pepper which has reached the stage of development that will withstand normal handling and shipping.

m. "Peppers grown for direct consumer marketing" means peppers grown for the purpose of selling directly to the consumer and which are grown on acreage not subject to an agreement between producer and packer to pack the production (the producer-packer agreement must be executed before you report your acreage).

n. "Person" means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision or agency of a State.

o. "Planting" means transplanting the pepper plant in the field or direct seeding in the field.

p. "Planting period" means the peppers planted within the dates set by the actuarial table, as fall-planted, winter-planted or spring-planted.

q. "Plant stand" means the number of live plants per acre before the plants were damaged due to insurable causes.

r. "Potential production" means the number of 1⅑ bushels of mature green peppers which the pepper plants would produce or would have produced, per acre, by the end of the insurance period.

s. "Replanting" means performing the cultural practices necessary to replant insured acreage to peppers.

t. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

u. "Tenant" means a person who rents land from another person for a share of the peppers or a share of the proceeds therefrom.

v. "Tropical depression" means only a large-scale, atmospheric wind-and-pressure system characterized by low pressure at its center and counterclockwise circular wind motion which has been identified by the United States Weather Service in which the minimum sustained surface wind (1-minute mean) is 33 knots per hour (38 miles per hour) or more at the U.S. Weather Service reporting station nearest to the crop damage at the time of loss.

w. "Unit" means all insurable acreage of peppers for each planting period in the county on the date of planting for the crop year:

(1) in which you have a 100 percent share; or

(2) which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the peppers on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with the Appeal Regulations (7 CFR Part 400—Subpart J).

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, DC, on March 18, 1986.

Michael Bronson,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 86-7271 Filed 4-1-86; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 1106

Milk in the Southwest Plains Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends for the month of March 1986 the shipping standard in the Southwest Plains order that a supply plant must meet to qualify as a pool plant for that month. The suspension was requested by a cooperative association and supported by two other cooperatives and the operator of a supply plant. Proponents represent a substantial majority of the producers who supply milk for the market. The expedited action is needed to ensure that dairy farmers who have historically supplied the fluid needs of the Southwest Plains market will share in the market's Class I milk sales during March 1986.

EFFECTIVE DATE: April 2, 1986.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-2089.

SUPPLEMENTARY INFORMATION: The Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers who have been historically associated with the market will continue to have their milk priced under the order for March 1986 and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Southwest Plains marketing area.

After consideration of all relevant material it is hereby found and determined that for the month of March 1986 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1106.7(b)(1), the words "until any month of such period in which less than 20 percent of the milk received or diverted as previously specified, is shipped to plants described in paragraph (a) of this section. A plant not meeting such 20 percent requirement in any month of such February–August period shall be qualified in any remaining month of such period only if transfers and diversions pursuant to paragraph (b)(2) of this section to plants described in paragraph (a) of the section are not less than 50 percent of receipts or diversions, as previously specified."

Statement of Consideration

This action removes for March 1986 the 20 percent shipping standard that a supply plant must meet to qualify as a pool plant. The order provides that supply plants that qualified as pool plants during each of the preceding months of September through January will continue to be pooled during the months of February through August if at least 20 percent of supply plant receipts are shipped to distributing plants.

The suspension was requested by Mid-America Dairymen, Inc. It is supported by two other cooperative associations and the operator of a pool supply plant at Bentonville, Arkansas. These organizations combined represent a substantial majority of the market's producers.

This action is needed because handlers operating fluid milk plants regulated under the order will not accept any milk produced in Arkansas. The milk is not being accepted at bottling plants because some of the milk supply has been found to contain the pesticide heptachlor. As a result, a substantial number of dairy farms in Arkansas have been quarantined. Although milk from these farms is not being marketed, the handlers operating fluid bottling plants want to avoid the risk of receiving contaminated milk and are refusing any milk produced in Arkansas.

The milk supply for fluid plants that normally originates on farms in Arkansas has been replaced by milk from other states and the Arkansas produced milk that is normally received at the Bentonville supply plant for shipment to distributing plants is temporarily without a fluid use market. Consequently, without a suspension of the shipping standard, Arkansas producers who have historically supplied the fluid milk needs of the market would not have their milk priced and pooled under the order.

Since the suspension request was received on March 19, any action for March if granted, must be taken immediately with no opportunity to invite interested parties to comment on the request through the normal public notice procedure. As noted, the action is supported by a substantial majority of the market's producers. Moreover, the urgency in this particular situation warrants the suspension without industry comments.

It is hereby found and determined that notice of proposed rulemaking, public procedure thereon, and thirty days' notice of the effective date hereof are impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that substantial quantities of milk of producers who regularly supply the market otherwise would be excluded from the marketwide pool, thereby causing a disruption in the orderly marketing of milk; and

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register.**

List of Subjects in 7 CFR Part 1106

Milk Marketing Orders, Milk, Dairy products.

It is therefore ordered, That the aforesaid provisions in § 1106.7(b)(1) of the Southwest Plains order are hereby suspended for March 1986.

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

1. The authority citation for 7 CFR Part 1106 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. In § 1106.7(b)(1), the words "until any month of such period in which less than 20 percent of the milk received or diverted as previously specified, is shipped to plants described in paragraph (a) of this section. A plant not meeting such 20 percent requirement in any month of such February-August period shall be qualified in any remaining month of such period only if transfers and diversions pursuant to paragraph (b)(2) of this section to plants described in paragraph (a) of the section are not less than 50 percent of receipts or diversions, as previously specified," are suspended.

Effective Date: April 2, 1986.

Signed at Washington, DC, on: March 26, 1986.

Alan T. Tracy,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 86–7236 Filed 4–1–86; 8:45 am]

BILLING CODE 3410-01-M

Farmers Home Administration

7 CFR Part 1944

Revision of Section 502 Rural Housing Loan Policies, Procedures and Authorizations

AGENCY: Farmers Home Admininstration, USDA.

ACTION: Interim rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding section 502 rural housing (RH) loans to authorize the Administrator of FmHA, in individual cases, to make an exception to any requirement in the regulation which is not inconsistent with the authorizing statute if the Administrator determines that application of the requirement would adversely affect the Government's interest or would endanger the immediate health and/or safety of applicants/borrowers or the community if there is no adverse effect on the Government's interest. The circumstance requiring this action is the recent extensive flooding in California which severely damaged dwellings of several FmHA RH borrowers. The intended effect is to allow FmHA to make loans to these borrowers to repair their homes for amounts that would increase the indebtedness on the properties to more than the appraised market values.

DATES: Interim rule effective April 2, 1986. However, comments will be considered if received on or before May 2, 1986.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives Management Branch, Farmers Home Admininstration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250. All written comments made pursuant to the publication will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Frank Colon, Chief, Homeownership Branch, Single Family Housing Processing Division or Dale Alling, Loan Specialist, at Farmers Home Administration, USDA, Room 5334–S, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250. Telephone (202) 382–1474.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined to be exempt from those requirements because an emergency situation exists. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published

for proposed rulemaking, since it involves an emergency situation and publication for comment is unnecessary.

Recent serious flooding in the State of California damaged the homes of more than 250 FmHA RH borrowers. Flood insurance was not available to these borrowers since their dwellings were not located within identified flood plains. The affected borrowers need repair loans to make their homes livable and protect the Government's security interest in the properties. In many cases, the loans necessary to bring the dwellings back to standard will cause the total indebtedness on the property to exceed the appraised market value. Current FmHA regulations limit property indebtedness to the market value of the property. FmHA is revising its regulations to add an exception authority on an individual case-by-case basis so that RH repair loans can be made to the California flood victims in excess of the appraised value of their homes and to cover other situations not allowed in the regulations where the Government's interest is or could be adversely affected.

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.410. For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V, 48 FR 29115, June 24, 1983, this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

List of Subjects in 7 CFR Part 1944

Home improvement, Loan programs—Housing and community development, Low and moderate income housing—Rental, Mobile homes, Mortgages, Rural housing Subsidies.

Therefore, Subpart A of Part 1944 of Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1944—HOUSING

1. The authority citation for Part 1944 continues to read as follows and all other authority citations which appear throughout Part 1944 are removed:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

2. Section 1944.47 is added to read as follows:

§ 1944.47 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that the Government's interest would be adversely affected or the immediate health and/or safety of applicants/borrowers or the community are endangered if there is no adverse effect on the Government's interest. The Administrator will exercise this authority only at the request of the State Director and recommendation of the Assistant Administrator, Housing. Requests for exceptions must be in writing by the State Director and supported with documentation to explain the adverse effect on the Government's interest, and/or impact on the applicant, borrower, or community, proposed alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

Dated: March 25, 1986.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 86–7178 Filed 4–1–86; 8:45 am]

BILLING CODE 3410–07–M

Animal and Plant Health Inspection Service

9 CFR Part 51

[Docket No. 86–006]

Payment of Indemnity for Animals Destroyed Because of Brucellosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations concerning the payment of indemnity for animals destroyed because of brucellosis. This document amends the brucellosis indemnity regulations by clarifying certain definitions, amending the definitions of "brucellosis reactor animal" and "brucellosis exposed animal," adding definitions of "State animal health official" and "unofficial vaccinate," and replacing references to the "1975 Recommended Uniform Methods and Rules" with references to the "official test" for brucellosis as defined in 9 CFR 78.1. These amendments are necessary to provide for the proper brucellosis disease status classification of animals so that indemnity payment can be made for animals which are affected with or exposed to brucellosis.

EFFECTIVE DATE: May 2, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. M.J. Gilsdorf, Cattle Diseases Staff, VS, APHIS, USDA, Room 817, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8711.

SUPPLEMENTARY INFORMATION:

Background

The "Animals Destroyed Because of Brucellosis" regulations in 9 CFR Part 51 (referred to below as the indemnity regulations) contain provisions governing the payment of indemnity for cattle, bison, and breeding swine destroyed because of brucellosis.

A document published in the **Federal Register** on November 6, 1985 (50 FR 46077–46079), proposed to amend the regulations by clarifying certain definitions, amending the definitions of "brucellosis reactor animal" and "brucellosis exposed animal," adding definitions of "State animal health official" and "unofficial vaccinate," and replacing references to the "1975 Recommended Uniform Methods and Rules" with references to the "official test" for brucellosis as defined in 9 CFR 78.1.

Comments were solicited concerning the proposal for a 60-day comment period ending January 6, 1986. No comments were received. Based on the rationale set forth in the proposal, the regulations are amended as proposed.

Executive Order 12291 and Regulatory Flexibility Act

This rule has been reviewed in conformance with Executive Order 12291 and has been determined to be not a major rule. The Department has determined that this rule will not have an effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; and will not have any adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

The number of cattle, bison, and swine owners who receive indemnity in any given year is less than 1 percent of all cattle, bison, and swine owners in the United States, and the amount of indemnity paid out of all kinds is less than $10 million per year.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 51

Animal diseases, Bison, Brucellosis, Cattle, Hogs Indemnity payments.

PART 51—ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS

Accordingly, Part 51, Title 9, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 51 continues to read as set forth below:

Authority: 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, 134b; 7 CFR 2.17, 1.51, and 371.2(d).

2. The definitions in § 51.1 are placed in alphabetical order and the paragraph designations are removed.

§ 51.1 Definitions [Amended].

3. In § 51.1, the following definitions are revised to read as follows:

Accredited veterinarian. An accredited veterinarian as defined in Part 160 of this chapter.

Brucellosis exposed animal. Except for a brucellosis reactor animal, any animal that: (1) Is part of or has been in contact with a herd known to be affected; or (2) has been in contact with a brucellosis reactor animal for a period of 24 hours or longer; or (3) has been in contact with a brucellosis reactor animal which has aborted, calved or farrowed within the past 30 days, or has a vaginal or uterine discharge.

Brucellosis reactor animal. Any animal classified as a brucellosis reactor as provided in the definition of official test in § 78.1 of this chapter.

Claimant. A person who files a claim for indemnity under § 51.7 for animals destroyed under this part.

Deputy Administrator. The Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, or any other Veterinary Services official to whom authority is delegated to act in his or her stead.

Destroyed. Condemned under State authority and slaughtered or otherwise dies.

State. Any State, the District of Columbia, Puerto Rico, the Virgin Islands of the United States, Guam, the Northern Mariana Islands, or any other territory or possession of the United States.

State representative. An individual employed in animal health activities by a State or a political subdivision thereof, and who is authorized by such State or political subdivision to perform the function involved under a cooperative agreement with the United States Department of Agriculture.

Veterinarian in Charge. The veterinary official of Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, who is assigned by the Deputy Administrator to supervise and perform offical animal health work of the Animal and Plant Health Inspection Service, in the State concerned.

Veterinary Services. Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture.

Veterinary Services representative. An individual employed by Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, who is authorized to perform the function involved.

4. In § 51.1, definitions of "State animal health official" and "unofficial vaccinate" are added in alphabetical order to read as follows:

State animal health official. The individual employed by a State who is responsible for livestock and poultry disease control and eradication programs in that State.

Unofficial vaccinate. Any cattle or bison which have been vaccinated for brucellosis other than in accordance with the provisions for official vaccinates set forth in § 78.1 of this chapter.

5. In § 51.1, the definition of "Official vaccinate" is removed.

6. In § 51.1, footnote number 1 is removed.

§ 51.3 [Amended]

7. In § 51.3, footnote numbers 2 and 3, and the references thereto, are renumbered 1 and 2 respectively.

§ 51.6 [Amended]

8. In § 51.6, footnote numbers 5 and 6, and the references thereto, are renumbered 1 and 2, respectively.

9. In § 51.9, paragraph (b) is revised to read:

§ 51.9 Claims not allowed.

* * * * *

(b) If the existence of brucellosis in the animal was determined based on the results of an official test, as defined in § 78.1 of this chapter, and specific instructions for the administration of the official test had not previously been issued to the individual performing the test by Veterinary Services and the State animal health official.

* * * * *

Done at Washington, D.C., this 27th day of March, 1986.

G.J. Fichtner,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 86–7179 Filed 4–1–86; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86–ASW–10; Amendment 39–5260]

Airworthiness Directives; Bell Helicopter Textron, Inc., et al.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that requires inspection of the main rotor blade grip on the BHTI Model 47 series; Texas Helicopter Corporation, U.S. Army Model OH–13E; and U.S. Army OH–13H; Hawkeye Rotor and Wing, U.S. Army Model OH–13E; Teryjon Aviation, Inc., Model Fast Kat I (U.S. Army OH–13S); and Continental Copters, Inc., U.S. Army Model OH–13H helicopters. The AD is prompted by 34 reports of cracked main rotor blade grips in the root of the threads. The AD is needed to prevent failure of the main rotor blade grip which would result in loss of flight control and subsequent loss of the helicopter.

DATES:

Effective date: March 31, 1986.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 31, 1986.

Compliance: As prescribed in body of AD.

ADDRESSES: The applicable Military Specification may be obtained from Commanding Officer, Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pennsylvania 19120. Reference should be made to MIL–I–6866B listed in D.O.D. Index Specifications and Standards.

A copy of the Military Specification is contained in the Rules Docket located at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Gary B. Roach, Helicopter Certification Branch, ASW–170, Aircraft Certification Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone number (817) 877–2593.

SUPPLEMENTARY INFORMATION: There have been 65 main rotor blade grips inspected for cracks in the root of the threads. Of the 65 grips inspected, 34 were found to be cracked. Since this condition is likely to exist or develop on other helicopters of the same type design, an airworthiness directive is being issued which requires a repetitive inspection of the main rotor blade grips on the BHTI Model 47 series; Texas Helicopter Corporation, U.S. Army Model OH–13E and U.S. Army Model OH–13H; Hawkeye Rotor and Wing, U.S. Army OH–13E; Teryjon Aviation, Inc., Model Fast Kat I (U.S. Army Model OH–13S); and Continental Copters, Inc., U.S. Army Model OH–13H helicopters.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT".**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Bell Helicopter Textron, Inc.; Texas Helicopter Corp.; Hawkeye Rotor and Wing; Teryjon Aviation, Inc.; Continental Copters, Inc.: Applies to Model 47 series, U.S. Army Model OH–13E and U.S. Army Model OH–13H, and Model Fast Kat I (U.S. Army Model OH–13S) helicopters certified in any category equipped with main rotor blade grips, BHTI Part Numbers (P/N) 47–120–135–2, and 47–120–135–3, 47–120–135–5, and 47–120–252–1; Main Rotor Blade Grip Assembly BHTI P/N's 47–120–252–7 and 47–120–252–11; and Texas Helicopters, Inc., P.M.A. P/N's 74–120–252–11 and 74–120–135–5.

Compliance is required as indicated, unless already accomplished.

To prevent failure of the main rotor blade grip, accomplish the following:

(a) Inspect main rotor blade grips having 1,175 hours' or more time in service on the effective date of this AD within the next 25 hours' time in service, and thereafter at intervals not to exceed 300 hours time in service in accordance with paragraph (c) of this AD.

(b) Inspect main rotor blade grips having less than 1,175 hours' time in service prior to the accumulation of 1,200 hours' time in service and thereafter at intervals not to exceed 300 hours' time in service in accordance with paragraph (c) of this AD.

(c) Perform a fluorescent dye penetrant inspection of the main rotor blade grip threads in accordance with Military Specification No. MIL–I–6866B through Amendment 3.

(d) Alternative inspections, modifications, or other actions which provide an equivalent level of safety may be used when approved by the Manager, Helicopter Certification Branch, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101.

The military specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive may obtain copies of Military Specification MIL–I–6866B upon request to Commanding Officer, Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pennsylvania 19120, by referencing MIL–I–6866B listed in DOD Index of Specifications and Standards. These documents may also be examined in Room 158, Building 3B, Office of Regional Counsel, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas, between 8 a.m. and 4 p.m., weekdays, except Federal holidays. This amendment becomes effective March 31, 1986.

Issued in Fort Worth, Texas, on March 14, 1986.

Don P. Watson,

Acting Director, Southwest Region.

[FR Doc. 86–7204 Filed 3–28–86; 9:47 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 85–NM–115–Ad; Amdt. 39–5276]

Airworthiness Directives; Boeing Model 747 Series Airplanes and Lockheed-California Company Model L–1011 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that requires modification of the left rear fan cowl door support stowage mechanism on all Lockheed Model L–1011 series airplanes and on Boeing Model 747 series airplanes powered by Rolls-Royce RB211–524 engines. This action is prompted by nine reports of engine throttle control mechanism jamming by an unrestrained left rear fan cowl door support that fell among the throttle mechanism linkages. The throttle control jamming could result in loss of engine control.

DATES: Effective May 10, 1986.

ADDRESSES: The applicable service bulletins specified in this AD may be obtained upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124; the Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept. 63–11, U–33, B–1; or the Service Modification Engineer, RB211 Propulsion System, Rolls-Royce Limited, P.O. Box 31, Derby, England. This

information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Kanji K. Patel (for Model 747 airplanes), Propulsion Branch, ANM-140S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, telephone (206) 431-2973; or Mr. Roy A. McKinnon (for Model L-1011 airplanes), Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808, telephone (213) 548-2835.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) to require modification of the fan cowl door support stowage mechanism on Lockheed Model L-1011 series airplanes and Boeing Model 747 series airplanes was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on December 5, 1985 (50 FR 49858). The comment period for the proposal closed on January 27, 1985.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The commenter noted that three L-1011 airplanes it operates have composite cowls which are not covered by Rolls-Royce Service Bulletin (S/B) RB211-71-7254, Revision 1, dated December 7, 1984. Rolls-Royce confirmed that this service bulletin does not cover composite cowls and noted that it intends to issue expeditiously another service bulletin which will cover them. The target date for issuing that service bulletin is late March 1986. At that time, the FAA will consider the need for further rulemaking action.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest service require the adoption of the rule as proposed.

Approximately 113 U.S. registered Model L-1011 series airplanes will be affected by this AD. There are currently no U.S.-registered Boeing Model 747 series airplanes powered by RB211-524 engines. It is estimated that it will take four manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour and $128 for parts for each engine modified. Based on these figures, the cost to modify the Model L-1011 airplanes is estimated to be $840 per airplane, or $94,920 for the airplanes on the U.S. register. The cost to modify a Model 747, should one be imported in the future, would be $1,120 per airplane.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Lockheed Model L-1011 or Boeing Model 747 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the Federal Aviation Regulation as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing and Lockheed-California Company: Applies to all Boeing Model 747 series airplanes equipped with Rolls-Royce RB211-524 engines, and all Lockheed Model L-1011 series airplanes, certificated in any category. To prevent loss of throttle control caused by an unstowed left rear fan cowl door support, accomplish the following within 12 months after the effective date of this AD, unless already accomplished:

A. Modify the fan cowl support strut stowage mechanism in accordance with Rolls-Royce Service Bulletin RB211-71-7254, Revision 1, dated December 7, 1984.

B. Alternate means of compliance which provides an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, for Boeing Model 747 airplanes; or the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, for Lockheed Model L-1011 airplanes.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124; the Lockheed-California Company, P.O. Box 551, Burbank, California 91520; or from Service Modification Engineer, RB211 Propulsion Systems, Rolls-Royce Limited, P.O. Box 31, Derby, England. These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington; or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective May 10, 1986.

Issued in Seattle, Washington, on March 26, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-7208 Filed 4-1-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8073]

Income, Excise, and Estate and Gift Taxes; Effective Dates and Other Issues Arising Under the Employee Benefit Provisions of the Tax Reform Act of 1984

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction.

SUMMARY: This document contains corrections to Treasury Decision 8073, which was published in the **Federal Register** on February 4, 1986 (51 FR 4312). T.D. 8073 issued temporary regulations relating to effective dates and other issues arising under the Employee Benefit Provisions of the Tax Reform Act of 1984.

EFFECTIVE DATE: These corrections are effective February 4, 1986.

FOR FURTHER INFORMATION CONTACT: Dale D. Goode of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224, telephone: 202-566-3935 (not a toll-free number).

Background

On February 4, 1986, the **Federal Register** published (51 FR 4312) Treasury Decision 8073 relating to effective dates arising under sections 91, 223, and 511–561 of the Tax Reform Act of 1984. The regulations were necessary because of changes to the applicable tax law made by the Tax Reform Act of 1984.

Need for Correction

As published, T.D. 8073 contains typographical errors and misinformation concerning the appropriate attorneys (and phone numbers) to be contacted, in the following locations: page 4313, second column, in the table, the fifth and seventh names; page 4313, second column, in the table, twentieth name and telephone number; page 4321, second column, lines 35 and 51; page 4323, third column, lines 55 and 56; page 4325, first column, line 66; page 4329, first column, line 11; page 4329, first column lines 36 and 37; page 4329, second column, line 43; page 4330, first column, line 50; page 4330, first column, line 64; page 4332, third column, line 67; page 4333, first column, line 2.

Correction of Publication

Accordingly, the publication of Treasury Decision 8073, which was the subject of FR Doc. 86–2172 (51 FR 4312), is corrected as follows:

Paragraph 1. In the table, on page 4313, second column, the fifth and seventh name "Charles M. Watkins" is removed and "Richard J. Wickersham" is added in its place.

Par. 2. In the table, on page 4313, second column, the twentieth name and telephone number "John T. Ricotta, (202) 566–3544" is removed and "Sylvia F. Hunt, (202) 566–6212" is added in its place.

§ 1.404(b)–1T [Amended]

Paragraph 3. In § 1.404(b)–1T, paragraph A–1, on page 4321, second column, line 35, the word "within" is removed and the word "with" is added in its place; also at line 51, the language "section 419, § 1.419–T and § 1.419A–2T." is removed and the language "section 419, § 1.419–1T and § 1.419A–2T." is added in its place.

§ 1.419–1T [Amended]

Par. 4. In § 1.419–1T, on page 4323, third column, paragraph A–3: (c), lines 35 and 36, the language "attributable to such employer for such year or years. However, an arrangement" is removed and the language "attributable to such employer. However, an arrangement" is added in its place.

Par. 5. In § 1.419–1T on page 4325, first column, paragraph A–6: (b), line 3, the language "with useful life extending substantially" is removed and the language "with a useful life extending substantially" is added in its place.

Par. 6. In § 1.419–1T, on page 4329, first column, paragraph A–11: (c), line 11, the language "5(T) (or would be so treated under this" is removed and the language "5T (or would be so treated under this" is added in its place.

§ 1.419A–1T [Amended]

Par. 7. In § 1.419A–1T, on page 4329, first column, paragraph A–1, lines 9 and 10, the language "under paragraph (b) of Q & A–2 of this regulation, taxable years of the" is removed and the language "under paragraph (b) of Q & A–2 of § 1.419–1T, taxable years of the" is added in its place.

§ 1.461(h)–4T [Amended]

Par. 8. In § .461(h)–4T, on page 4329, second column, paragraph A–1, line 20, the language "section 461(b)(4) and the economic" is removed and the language "section 461(h)(4) and the economic" is added in its place.

§ 1.463–1T [Amended]

Par. 9. In § 1.463–1T, on page 4330, first column, paragraph (e)(3), last line, the language "§ 10.2(c)(ii)(B) of this chapter." is removed and the language "section 463(b)(2)." is added in its place.

Par. 10. In § 1.463–1T, on page 4330, first column, paragraph (f), line 5, the language "deductions under section 162(a) for a" is removed and the language "a deduction under section 162(a) for a" is added in its place.

§ 1.512(a)–5T [Amended]

Par. 11. In § 1.512(a)–5T, on page 4332, third column, paragraph A–3: (b), second line from the bottom of page, the language "will equal the lesser of two amounts: (3)" is removed and the language "will equal the lesser of two amounts:" is added in its place.

Par. 12. In § 1.512(a)–5T, on page 4333, first column, paragraph A–3: (b), line 2, the language "contributions), or (4) the excess of the" is removed and the language "contributions); or, the excess of the" is added in its place.

James J. McGovern,

Director, Employee Plans and Exempt Organizations Division.

[FR Doc. 86–7273 Filed 4–1–86; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; USS Halsey

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS HALSEY (CG 23) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS without interfering with its special function as a naval cruiser. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: March 18, 1986.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400 Telephone number: (202) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS HALSEY (CG 23) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and Annex I, section 3(a), pertaining to the horizontal distance between the forward and aft masthead lights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the vessel. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is

impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§706.2 [Amended]

1. Table Five of §706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull, Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained.
USS HALSEY	CG 23						X	X	29

Dated: March 18, 1986.

Approved:

John Lehman,

Secretary of the Navy.

[FR Doc. 86-7232 Filed 4-1-86; 8:45 am]

BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; USS England

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS England (CG 22) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS without interfering with its special function as a naval cruiser. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: March 18, 1986.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400 Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION:

Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS ENGLAND (CG 22) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and Annex I, section 3(a), pertaining to the horizontal distance between the forward and aft masthead lights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the vessel. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§706.2 [Amended]

1. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I. sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS ENGLAND	CC22						x	x	30

Dated: March 18, 1986.

Approved:

John Lehman,

Secretary of the Navy.

[FR Doc. 86-7231 Filed 4-1-86; 8:45 am]

BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment USS Harry E. Yarnell

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS HARRY E. YARNELL (CG 17) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS without interfering with its special function as a naval cruiser. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: March 17, 1986.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS HARRY E. YARNELL (CG 17) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and Annex I, section 3(a), pertaining to the horizontal distance between the foward and aft masthead lights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the vessel. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

1. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS HARRY E. YARNELL	CG 17						X	X	29

Dated: March 17, 1986.

Approved:

John Lehman,

Secretary of the Navy.

[FR Doc. 86-7233 Filed 4-1-86; 8:45 am]

BILLING CODE 3810-AE-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2992-5]

Approval and Promulgation of Implementation Plans; Indiana; Correction

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rulemaking; correction.

SUMMARY: This notice corrects an error contained in a notice of final rulemaking disapproving the Lake County, Indiana, Total Suspended Particulates (TSP) plan, as submitted on October 11, 1983, October 24, 1983, and April 16, 1984. This final rulemaking was published in the January 17, 1986, **Federal Register** (51 FR 2492).

FOR FURTHER INFORMATION CONTACT: Colleen W. Comerford, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 S. Dearborn Street, Chicago, Illinois 60604, (312) 886-6034.

SUPPLEMENTARY INFORMATION: The error is located on page 2498 of the January 17, 1986, **Federal Register**, in the third column under the section entitled "PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS". This section codifies the disapproval. In the January 17, 1986, **Federal Register**, § 52.776 Control strategy: Particulate matter was amended by adding new paragraph (h). This should have read new paragraph (j).

Today's correction does not change in any way the substance of USEPA's January 17, 1986 (51 FR 2492), disapproval of the Lake County TSP plan. Therefore, today's correction does not extend the rights for judicial review of the disapproval, under section 307(b) of the Act, beyond the original date of March 18, 1986.

Dated: March 13, 1986.

Valdas V. Adamkus,

Regional Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart P—Indiana

Title 40 of the Code of Federal

Regulations, Chapter I, Part 52 is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

§ 52.770 [Corrected]

2. Section 52.770 is corrected by changing "§ 52.776(h)" to "§ 52.776(j)" in paragraph (c)(57).

§ 52.776 [Corrected]

3. Section 52.776 is corrected by changing the codification of the disapproval, which was incorrectly codified on January 17, 1986 (51 FR 2492), as paragraph (h), to new paragraph (j).

[FR Doc. 86-6751 Filed 4-1-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 166

[OPP-250064B; FRL-2994-6]

Exemption of Federal and State Agencies for Use of Pesticides Under Emergency Conditions; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction.

SUMMARY: EPA issued a rule, "Exemption of Federal and State Agencies for Use of Pesticides under Emergency Conditions," which was published in the **Federal Register** of January 15, 1986 (51 FR 1896), FR Doc. 86-854. In the table of contents on page 1902 and on page 1903 of that rule, the heading for § 166.7 was given incorrectly as "User notification and advertising." This document corrects that heading to read "User notification."

FOR FURTHER INFORMATION CONTACT: By mail: Franklin Gee, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Rm. 1120B, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA, (703)-557-0592).

Dated: March 21, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 86-6984 Filed 4-1-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 3F2901/R817; FRL-2995-4]

Pesticide Tolerances for Potassium Salt of 1-(4-Chlorophenyl)-1,4-Dihydro-6-Methyl-4-Oxo-Pyridazine-3-Carboxylic Acid

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the hybridizing agent potassium salt of 1-(4-chlorophenyl)-1,4-dihydro-6-methyl-4-oxo-pyridazine-3-carboxylic acid (referred to in the preamble of this document as fenridazone-potassium) in or on certain raw agricultural commodities. This regulation to establish maximum permissible levels for residues of fenridazone-potassium in or on the commodities was requested by the Rohm & Haas Co.

EFFECTIVE DATE: Effective on April 2, 1986.

ADDRESS: Written objections, identified by the document control number [PP 3F2901/R817], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice of proposed rulemaking, published in the **Federal Register** of February 5, 1986 (51 FR 4514), that announced that Rohm & Haas Co., Independence Mall West, Philadelphia, PA 19105, reproposed in pesticide petition 3F2901 higher tolerance levels for residues of the hybridizing agent fenridazone-potassium because of potential increased human exposure and to provide a 30-day comment period before a final decision is made to establish the tolerances. As stated in 51 FR 4514, previous tolerances were initially proposed in the **Federal Register** issue of July 13, 1983 (48 FR 32078). The new tolerance levels follow:

Commodities	New tolerances (ppm)
Cattle (fat, meat, mbyp)	0.05
(kidney and liver)	1.0
Eggs	0.05
Goat (fat, meat, mbyp)	0.05
(kidney and liver)	1.0
Hog (fat, meat, mbyp)	0.05
(kidney and liver)	1.0
Horse (fat, meat, mbyp)	0.05
(kidney and liver)	1.0
Milk	0.05
Poultry (fat, meat, mbyp)	0.30
Sheep (fat, meat, mbyp)	0.05
(kidney and liver)	1.0
Wheat (grain)	40.0
(straw)	25.0

There were no comments or requests for referral to an advisory committee received in response to the proposed rulemaking.

The data submitted and other relevant information have been evaluated and discussed in the proposed rulemaking. Based on the data and information considered, the Agency concludes that the tolerances would protect the public health. Therefore the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 24, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.423 is added to read as follows:

§ 180.423 Potassium salt of 1-(4-chlorophenyl)-1,4-dihydro-6-methyl-4-oxo-pyridazine-3-carboxylic acid; tolerances for residues.

Tolerances are established for residues of the hybridizing agent potassium salt of 1-(4-chlorophenyl)-1,4-dihydro-6-methyl-4-oxopyridazine-3-carboxylic acid, in or on the following raw agricultural commodities:

Commodities	Parts per million
Cattle, fat	0.05
Cattle, kidney and liver	1.0
Cattle, meat	0.05
Cattle, mbyp	0.05
Eggs	0.05
Goat, fat	0.05
Goat, kidney and liver	1.0
Goat, meat	0.05
Goat, mbyp	0.05
Hog, fat	0.05
Hog, kidney and liver	1.0
Hog, meat	0.05
Hog, mbyp	0.05
Horse, fat	0.05
Horse, kidney and liver	1.0
Horse, meat	0.05
Horse, mbyp	0.05
Milk	0.05
Poultry, fat	0.30
Poultry, meat	0.30
Poultry, mbyp	0.30
Sheep, fat	0.05
Sheep, kidney and liver	1.0
Sheep, meat	0.05
Sheep, mbyp	0.05
Wheat, grain	40.0
Wheat, straw	25.0

[FR Doc. 86-6999 Filed 4-1-86; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 180

[PP 2F2647 and 5F3171/R775; FRL-2993-3]

Cyano(3-Phenoxyphenyl)Methyl 4-Chloro-Alpha-(1-Methylethyl)Benzeneacetate; Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the insecticide cyano(3-phenoxyphenyl)methyl 4-chloro-alpha-(1-methylethyl)benzeneacetate in or on the raw agricultural commodities snap beans and carrots. This regulation to establish maximum permissible levels for residues of the insecticide in or on the commodities was requested pursuant to petitions by the Shell Oil Co.

EFFECTIVE DATE: Effective on April 2, 1986.

FOR FURTHER INFORMATION CONTACT:

By mail: George LaRocca, Product Manager (PM) 15, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Room 204, CM #2, 401 M Street, SW., Washington, DC 20460

Office location and telephone number: 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-2690).

SUPPLEMENTARY INFORMATION: EPA issued notices, published in the **Federal Register** of March 31, 1982 (47 FR 13580) and January 30, 1985 (50 FR 4265), which announced that the Shell Oil Co., 1025 Connecticut Avenue NW., Washington, DC 20036, had submitted pesticide petitions 2F2647 and 5F3171, respectively, to the Agency proposing to amend 40 CFR 180.379 by establishing tolerances for residues of the insecticide cyano(3-phenoxyphenyl)methyl 4-chloro-*alpha*-(1-methylethyl) benzeneacetate in or on the raw agricultural commodities (RAC) bean vines at 30.0 parts per million (ppm) and succulent beans at 1.0 ppm (PP 2F2647) and carrots at 0.5 ppm (PP 5F3171).

PP 2F2647 was subsequently amended in the **Federal Register** of December 5, 1984 (49 FR 47550), increasing the tolerance level for succulent beans to 2.0 ppm and adding bean vine hay at 100.0 ppm. The petition was again amended to show beans as snap beans rather than succulent beans and to delete bean vines and bean vine hay.

There were no comments received in response to the notices of filing.

The data submitted in this petition and other relevant material have been evaluated. The toxicology data considered in support of the tolerance include an acute oral rat toxicity study with a median lethal dose (LD_{50}) of 1 to 3 grams (g)/ kilogram (kg) (water vehicle) and 450.0 milligrams (mg)/kg of body weight (bw) in dimethylsulfoxide vehicle; a 90-day dog feeding study with a no-observed-effect level (NOEL) of 500 ppm (highest dose tested); a 90-day rat feeding study with a NOEL of 125 ppm; an 18-month mouse feeding study with a NOEL of less than 100 ppm, with no oncogenic effects noted under the conditions of the study at dosage levels of 100, 300, 1,000, and 3,000 ppm (3,000 ppm being the highest dosage level tested in the study); a 24-month mouse feeding study with a NOEL of 10 to 50 ppm for males and 50 to 250 ppm for females in which no oncogenic effects were noted at dosage levels of 10, 50, 250, and 1,250 ppm (1,250 ppm being the highest dosage level tested); a 24-month rat feeding study that demonstrated no oncogenic effects at 1,000 ppm (only level tested—significantly decreased body weight was observed at this dose level); a 2-year rat feeding study (no observable effects at dosage levels of 1, 2, 5, and 250 ppm, 250 ppm being the highest level fed); a 3-generation rat reproduction study with a NOEL of 250 ppm (highest level fed); teratology studies (in mice and rabbits, both negative at the highest dose of 50 mg/kg of bw/day); and the following mutagenicity studies: mouse dominant lethal (negative at 100 mg/kg of bw, which was the highest level fed); mouse host-mediated bioassay (negative at 50 mg/kg of bw, which was the highest level fed); Ames test *in vitro* (negative); and bone marrow cytogenic study in the Chinese hamster (negative at 25 mg/kg of bw). The following studies assessing neurological effects were performed: a hen study negative at 1.0 gm/kg of bw for 5 days, repeated at 21 days; a rat (8-day) acute study with a NOEL of 200 mg/kg of bw; a 15-month rat feeding study which resulted in a systemic NOEL of 500 ppm and a NOEL of 1,500 ppm with respect to nerve damage.

The acceptable daily intake (ADI) is calculated to be 0.125 mg/kg/day based on the 2-year rat feeding study and using a 100-fold safety factor. The maximum permissible intake (MPI) has been calculated to be 7.5 mg/day for a 60-kg person. Published and pending tolerances result in a maximum theoretical residue contribution (TMRC) of 2.47 mg/day based on a 1.5-kg diet and utilize 33.00 percent of the ADI. The establishment of these tolerances will increase the TMRC to 2.5755 mg/day (1.5 kg) and will utilize a total of 34.34 percent of the ADI.

The metabolism of the insecticide is adequately understood. An adequate analytical method, gas chromatography, is available for enforcement purposes. There are currently no regulatory actions pending against continued registration of this insecticide.

Existing tolerances for meat, milk, poultry and eggs will accommodate any secondary residues that may result from the tolerances.

The pesticide is considered useful for the purpose for which the tolerances are sought. It is concluded that establishment of the tolerances will protect the public health, and they are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported

by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant impact on a substantial number of small entities.

A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 19, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.379 is amended by adding and alphabetically inserting the following raw agricultural commodities, to read as follows:

§ 180.379 Cyano (3-phenoxyphenyl) methyl-4-chloro-alpha-(1-methylethyl)benzeneacetate; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Beans, snap	2.0
* * * * *	
Carrots	0.5
* * * * *	

[FR Doc. 86–6745 Filed 4–1–86; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 5F3273/R823 (FRL–2993–4)]

Pesticide Tolerances for 2-[4, 5-Dihydro-4-Methyl-4-(1-Methylethyl)-5-Oxo-1H-Imidazol-2-yl]-3-Quinoline Carboxylic Acid

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for the herbicide 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-3-quinoline carboxylic acid (referred to in the preamble of this document as imazaquin) in or on the raw agricultural commodity soybeans. This regulation to establish the maximum permissible level for residues of imazaquin in or on the commodity soybeans was requested by the American Cyanamid Co.

EFFECTIVE DATE: Effective on April 2, 1986.

ADDRESS: Written objections identified by the document control number [PP 5F3273/R823]may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Office location and telephone number: Room 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of August 21, 1985 (50 FR 33840), that announced that American Cyanamid Co., P.O. Box 400, Princeton, NJ 08540, submitted pesticide petition 5F3273, proposing the establishment of a tolerance for residues of the herbicide imazaquin in or on the raw agricultural commodity soybeans at .05 part per million (ppm).

There were no comments received in response to the notice of filing.

The pesticide is considered useful for the purposes for which the tolerance is sought. The data submitted in the petition and other relevant material have been evaluated. The data considered include a 21-day dermal study in rabbits with a no-observed-effect level (NOEL) of 1,000 mg/kg bwt/day (HDT); a 90-day feeding study in rats supporting a NOEL of 10,000 ppm (or 800 mg/kg bwt/day), the highest dose tested; a 2-year oral dietary study in Sprague-Dawley (SD) rats tested at levels of 1,000, 5,000 and 10,000 ppm, with a NOEL of 10,000 ppm (HDT) or 500 mg/kg bwt/day; an 18-month oncogenicity study in the CD-1 mouse tested at levels of 250, 1,000, and 4,000 ppm, with a NOEL of 1,000 ppm (150 mg/kg bwt) and a lowest effect level (LEL) of 4,000 ppm with decreased body weight gain in females; a three generaton reproduction study in SD rats tested at levels of 1,000, 5,000 and 10,000 ppm, with a NOEL of 10,000 ppm (1,000 mg/kg bwt) (HDT); a teratology study in New Zealand white rabbits tested at levels of 100, 250, and 500 mg/kg/day, with a teratogenic NOEL of 500 mg/kg/day, an embryotoxic NOEL of 500 mg/kg/day, a maternal NOEL of 250 mg/kg/day, and a maternal LEL of 500 mg/kg/day with decreased weight gain; a teratology study in rats tested at 0, 250, 500 and 2,000 mg/kg bwt/day with a teratogenic NOEL of $>$ 2,000 mg/kg bwt/day, a fetotoxic NOEL of 500 mg/kg bwt/day, a fetotoxic lowest-observed-effect level (LOEL) 2,000 mg/kg/day with a slight decrease in fetal weight and reduced ossification, a maternal toxicity NOEL of 500 mg/kg bwt/day, and a maternal toxicity LOEL of 2,000 mg/kg bwt/day with salivation, alopecia, lethargy, flaccidity, and 8 percent mortality; a 1-year dietary toxicity study in beagle dogs tested at 0, 200, 1,000 and 5,000 ppm with a NOEL of 1,000 ppm and a LOEL of 5,000 ppm with decreased body weight gain, skeletal myopathy, slight anemia, bone marrow hyperplasia, increased serum levels of SGOT, SGPT and CPK and increased relative liver weights; a single low-dose metabolism study in SD rats in which the substance was almost entirely excreted in 48 hours (urine—94 percent; feces—4 percent); a negative *in vitro* cytogenetics (CHO) study; a negative unscheduled DNA synthesis (rat hepatocytes) study; a negative CHO/HGPRT point mutation study; a negative Ames test for mutagenicity; an acute dermal sensitization study in guinea pigs which indicates that the chemical is not a sensitizer; acute oral toxicity studies in rats with an LD_{50} in both sexes of $>$ 5,000 mg/kg bwt; acute dermal studies in rabbits with LD_{50} of $>$ 2,000 mg/kg bwt; an acute inhalation study in rats with an LC_{50} of $>$ 5.7 mg/L in both sexes; primary dermal irritation studies in rabbits which indicate the chemical is mildly irritating to the skin; and primary eye irritation studies in the rabbit which indicate the chemical is nonirritating.

The accepted daily intake (ADI), based on the 1-year dog feeding study (NOEL of 1,000 ppm or 25 mg/kg bwt/day) and using a 100-fold safety factor, is calculated to be 0.25 mg/kg bwt/day. The maximum permissible intake (MPI) for a 60-kg person is calculated to be 15 mg/day. The theoretical maximum residue contribution (TMRC) for use on soybeans is calculated to be 0.0007 mg/day, which accounts for 0.00 percent of the ADI (0.25 mg/kg bwt/day).

The nature of the residue of imazaquin in soybeans is adequately

understood. From the proposed use on soybeans there is no reasonable expectation of detectable secondary residues in meat, milk, poultry, and eggs (40 CFR 180.6(a)(3)), and tolerances are not required for these items. An adequate analytical method, gas chromatography using a nitrogen-sensitive detector, is available for enforcement purposes.

Because of the long lead time from establishing this tolerance to publication of the enforcement methodology in the Pesticide Analytical Manual II, an interim analytical methods package is being made available to the state pesticides enforcement chemists when requested from:

By mail: Information Service Section (TS-757C), Program Management Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Office location and telephone number: Rm. 236, CM# 2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-3262).

Based on the information and data considered, the Agency has determined that the establishment of the tolerance for residues of the herbicide in or on the commodity soybeans will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 20, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.426 is added, to read as follows:

§ 180.426 2-[4,5-Dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-3-quinoline carboxylic acid; tolerance for residues.

A tolerance is established for residues of the herbicide 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-3-quinoline carboxylic acid, in or on the raw agricultural commodity soybeans at 0.05 part per million.

[FR Doc. 86-6744 Filed 4-1-86; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 565 and 571

[Docket No. 1-22; Notice 14]

Vehicle Identification Number Response to Petition for Reconsideration

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Response to petition for reconsideration.

SUMMARY: This notice denies a petition for reconsideration filed by Volkswagen of America (VWoA) with regard to an amendment to NHTSA's vehicle identification number (VIN) requirements. VWoA requested that the agency delete a provision which exempts from certain of the VIN requirements vehicles which are imported into the United States under bond and do not meet U.S. standards, but which will subsequently be modified to meet those standards.

FOR FURTHER INFORMATION CONTACT: Brian McLaughlin, Office of Market Incentives (NRM-20), National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202-426-1740).

SUPPLEMENTARY INFORMATION: On May 19, 1983, NHTSA published a final rule amending Federal Motor Vehicle Safety Standard No. 115, *Vehicle Identification Number*. (48 FR 22567). That amendment, made in response to a petition filed by the Motor Vehicle Manufacturers Association, transferred portions of the existing standard concerning VIN format and content to a new, separate agency regulation. This change was intended to remove the possibility that certain minor VIN errors regarding format and content would trigger the recall and remedy provisions of the National Traffic and Motor Vehicle Safety Act. Those provisions apply to violations of a standard, but not to violations of a general regulation. In addition, the final rule adopted one minor substantive amendment that exempted from most VIN requirements vehicles which are imported into the United States under bond (except by the actual manufacturer of the vehicle or a subsidiary thereof) and do not meet U.S. standards, but which will subsequently be modified to meet those standards. (These vehicles were referred to as "bonded imports" in earlier rulemaking notices concerning Standard No. 115. However, they are referred to as "direct imports" in this notice as they are in the theft standard rulemaking, to avoid the use of two different terms to refer to the same set of vehicles in discussing the theft standard below.

On June 20, 1983 VWoA filed a petition for reconsideration with the agency, requesting that the exemption provision for direct imports be deleted. VWoA argued that the exemption will increase vehicle thefts by complicating the task of law enforcement officials in identifying vehicles. Since direct imports are exempt from VIN format requirements, VWoA said that these officials will be unable to use the encoded vehicle attribute information which would appear in a conforming VIN. Further, VWoA argued that complying with VIN requirements would not be a major burden for importers of the exempted vehicles since those vehicles must be modified in any case to conform to all other safety standards.

On January 30, 1985 (50 FR 4221), NHTSA issued a notice correcting a typographical error in the 1983 final rule, to clarify that direct imports are exempt only from the requirements of Standard No. 115 that each VIN have 17 characters in a specified format and a check digit. Direct imports must still have a unique VIN assigned by the assembling manufacturer which is

permanently affixed to the vehicle, and is clearly legible.

The agency is concerned that eliminating the exemption and having each direct importer obtain its own unique "world manufacturer identifier" from the Society of Automotive Engineers, as specified in 49 CFR 565.5(c), could impair the operation of the VIN system by overloading it with such requests, and, more importantly, could adversely affect law enforcement actions. Direct imports are often, though not always, brought into this country by individuals intending to use the vehicle personally, or by small commercial operations bringing in a very small number of vehicles, compared to total U.S. sales. Law enforcement officials have consistently argued to NHTSA that it is preferable to have a vehicle maintain its *original* VIN, i.e., the one assigned by the assembling manufacturer, even if that number is incompatible with the Federal system, rather than modify that number. These officials are concerned about the confusion which could result if a given vehicle were assigned one VIN by the assembling manufacturer and another one by the importer. They are also concerned about the harm which would result if equipment for modifying VIN's became available on a widespread basis, facilitating VIN changes by car thieves.

Moreover, this agency notes that the problems of vehicle theft are addressed by the vehicle theft prevention standard issued on October 24, 1985, (50 FR 43166), as part of its implementation to Title VI (Motor Vehicle Theft Law Enforcement Act of 1984) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2021). In its petition, VWoA's main argument for urging that VIN's meeting the requirements of Standard No. 115 be affixed to direct imports was that this change would aid law enforcement officials in recovering stolen vehicle parts. This is also a primary purpose of the vehicle theft prevention standard which requires that selected high-theft lines of passenger cars have major original and replacement equipment parts marked with identifying numbers. The 17-digit VIN is required to be used as the identifying number on all parts, except for the engine and transmission which may be stamped with a VIN derivative.

The method of compliance with the vehicle theft prevention standard for direct imports was considered thoroughly (50 FR 43181). The preamble discussed the issue raised by the National Automobile Theft Bureau (NATB) that some direct importers have assigned and affixed new 17-digit, U.S.-type VIN's, as urged by VWoA in its petition, to vehicles imported with Euro-VINs. The NATB stated that law enforcement officials, using the new "homemade" VIN assigned by a direct importer, have sometimes been unable to trace a vehicle either to the original, foreign manufacturer or to the direct importer. Therefore, NATB urged this agency to require the use of Euro-VINs by direct importers. The final rule requires the direct importers mark vehicle parts with the Euro-VIN assigned by the original manufacturer before importation into the United States.

The final rule establishing the theft standard also set special provisions for certification of compliance with this standard by direct importers. A direct importer must affix the certification label permanently to the car, indentify the model year and line, and the direct importer's corporate or individual name, preceded by "Imported by." NHTSA believes that these provisions will reduce the incidence of motor vehicle thefts of direct imports by facilitating the tracing and recovery of parts from stolen vehicles.

For the foregoing reasons, VWoA's petition is denied.

Issued on: March 27, 1986.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 86-7241 Filed 4-1-86; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 571

[Docket No. 84-4; Notice 4]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

Correction

In FR Doc. 86-5962 beginning on page 9454 in the issue of Wednesday, March 19, 1986, make the following corrections: On page 9457, in § 571.108, in the table labeled Figure 15, in the section under heading "Lower beam", the first entry, in the first column should read "10U-90U"; and the last entry in the first column should read "H-V".

BILLING CODE 1505-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 50587-5133]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; correction.

SUMMARY: This document replaces incorrect statistical grids for reporting the harvest in the final rule for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic that was published August 28, 1985, at 50 FR 34840.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, 813-893-3722.

The following amendment is made to 50 CFR Part 642:

§ 642.29 [Amended]

In § 642.29 Figure 3 is removed and the following Figure 3 is inserted as a replacement for the Statistical Grids in the Gulf of Mexico and the Statistical Grids in the South Atlantic.

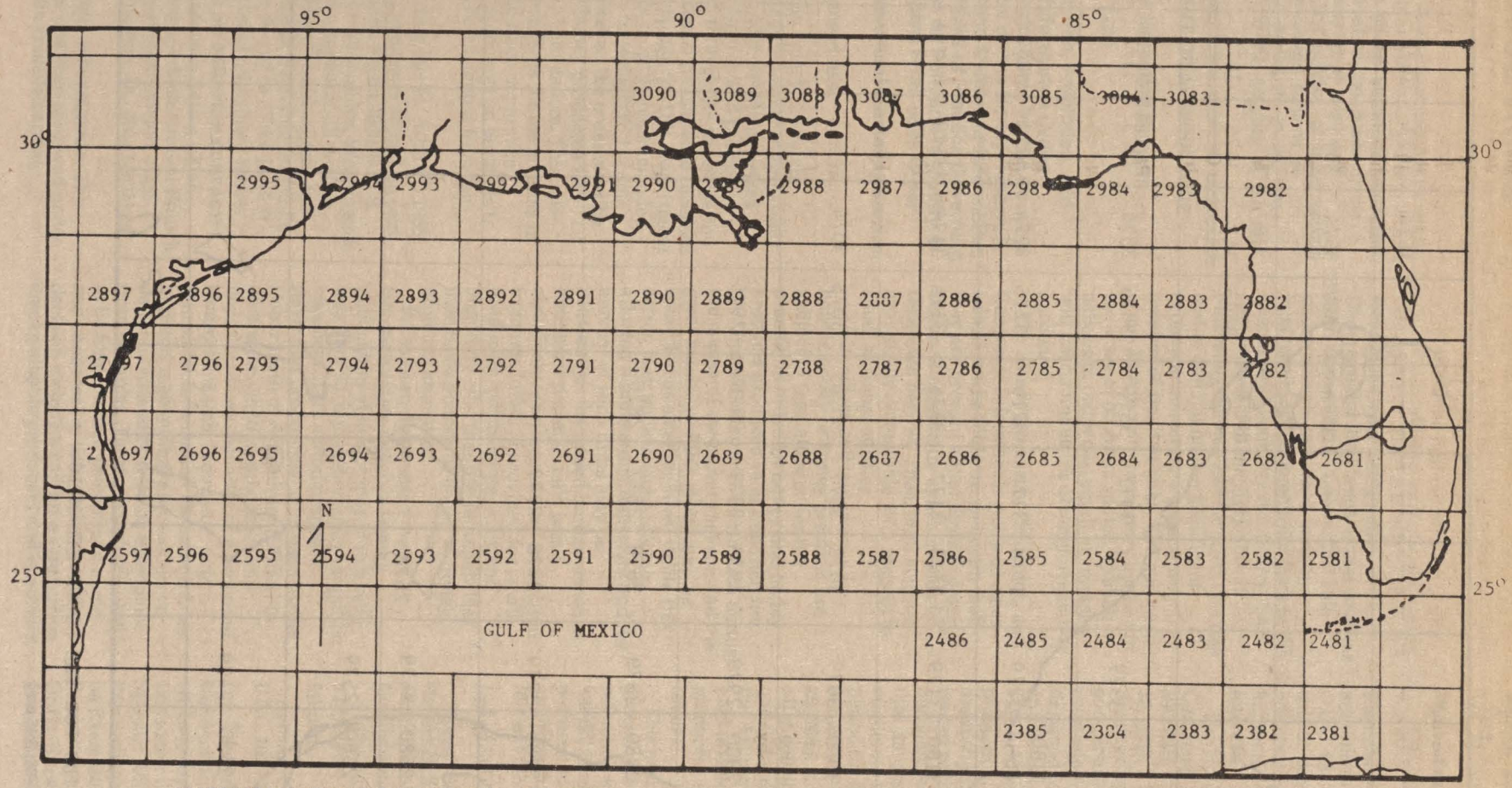
Dated: March 28, 1986.

Carmen J. Blondin,

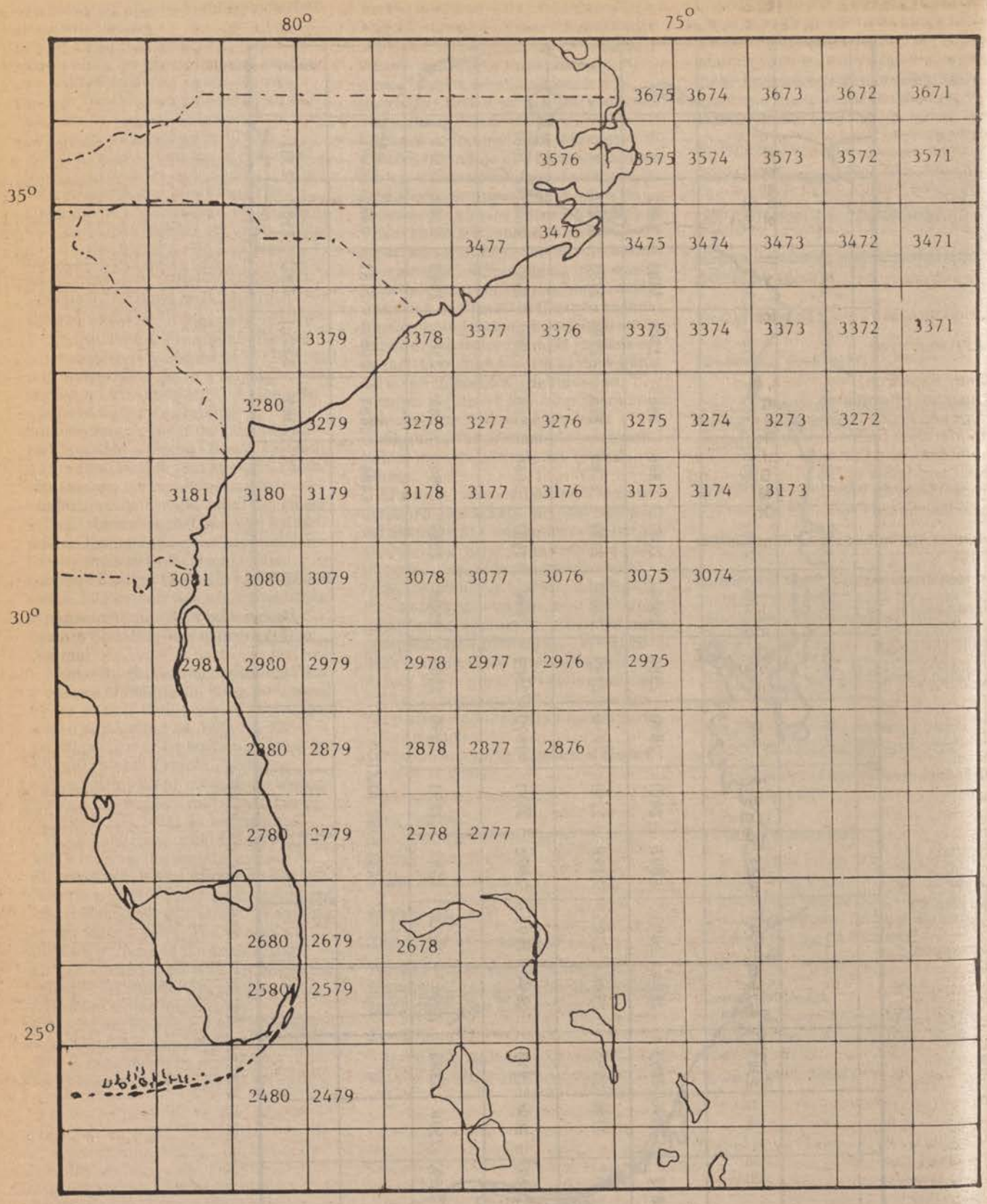
Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

BILLING CODE 3510-22-M

FIGURE 3 - STATISTICAL GRIDS FOR REPORTING THE HARVEST OF COASTAL MIGRATORY PELAGIC FISH



STATISTICAL GRIDS IN THE GULF OF MEXICO



STATISTICAL GRIDS FOR THE SOUTH ATLANTIC

[FR Doc. 86-7229 Filed 4-1-86; 8:45 am]
BILLING CODE 3510-22-C

Proposed Rules

Federal Register
Vol. 51, No. 63
Wednesday, April 2, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1240

Honey Research, Promotion, and Consumer Information Order; Proposed Procedures for the Conduct of Referenda on the Honey Research, Promotion, and Consumer Information Order and Rules of Practice Governing Proceedings on Petitions to Modify or to be Exempted From Such Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601–4612) authorizes a program of research and promotion to be developed through the promulgation of an order. Based on evidence received at a public hearing, the U.S. Department of Agriculture recently recommended that an order be issued. To become effective, however, the order must be approved by honey producers and importers in a referendum. This rule proposes procedures for the conduct of referenda and rules of practice governing proceedings on petitions to modify or to be exempted from the order.

DATE: Comments due by April 17, 1986.

ADDRESSES: Comments should be sent to: Docket Clerk, Room 2069–S, U.S. Department of Agriculture, Washington, DC 20250. Two copies of all written comments should be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: James B. Wendland, Acting Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250 (202) 447–5053.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been designated a "non-major" rule under criteria contained therein. Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The purposes of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

The Honey Research, Promotion, and Consumer Information Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities for their own benefit. Thus, both statutes are usually compatible with respect to small business entities.

All handlers and importers who handle honey or honey products are subject to regulation under the promotion order for honey and honey products produced in or imported into the United States and Puerto Rico during the course of the current season and the great majority of this group may be classified as small entities. While this action may impose some costs on affected handlers and importers and the number of such firms may be substantial, the added burden on small entities, if present at all, is not significant. Furthermore, an exemption from regulation is provided for small producers, producer-packers, and importers who produce or import less than 6,000 pounds of honey or honey products annually.

It has been determined that a situation exists which warrants publication of this proposed rule with less than 30 days opportunity for public comment. This action proposes referenda procedures to be used by the Department of Agriculture (USDA) to determine whether producers and importers favor issuance of a proposed Honey Research, Promotion, and Consumer Information Order and rules of practice governing proceedings on petitions to modify or to be exempted from the order. These procedures need to be implemented promptly to avoid any unnecessary delay should the final decision include a call for a referendum among eligible producers and importers. Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that 30 days notice of public rulemaking with respect to this proposal is impracticable and contrary to the public interest.

The Honey Research, Promotion, and Consumer Information Act (Pub. L. 98–590, 98th Congress, approved October 30, 1984, 7 U.S.C. 4601–4612) authorizes the development of a nationally coordinated program of research, promotion, and consumer education designed to expand markets for honey and honey products. A public hearing was held on a proposed honey research, promotion, and consumer information order in July of 1985. Based on the record of the hearing, a recommended decision was issued which concluded that the proposed order would effectuate the purposes of the Act. The period for filing comments on the recommended decision ended February 28, 1986. A final decision will be issued after consideration of the comments; and if the decision supports an order, the Act requires that a referendum be held to determine whether affected producers and importers favor such order.

This proposal would establish procedures to be followed in conducting referenda under this part. In addition, it would establish rules for proceedings on petitions to modify or be exempted from an order. Such procedures are necessary to meet the requirements of the Act.

List of Subjects in 7 CFR Part 1240

Honey, Agricultural research, Reporting and recordkeeping requirements, Market development, and Consumer information.

1. The authority citation for proposed 7 CFR Part 1240 continues to read as follows:

Authority: Pub. L. 98–590; 98th Congress; 7 U.S.C. 4601–4612.

2. The Subpart—Procedure for the Conduct of Referenda in Connection with Honey Research, Promotion, and Consumer Information Order and the Subpart Rules of Practice Governing Proceedings on Petitions to Modify or to be Exempted From the Honey Research, Promotion, and Consumer Information Order, are added to Proposed Part 1240 to read as follows:

PART 1240—HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION ORDER

Subpart—Procedure for the Conduct of Referenda in Connection with the Honey Research, Promotion, and Consumer Information Order

Sec.

Subpart—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From the Honey Research, Promotion, and Consumer Information Order

Subpart—Procedure for the Conduct of Referenda in Connection with the Honey Research, Promotion, and Consumer Information Order

§ 1240.200 General.

Referenda to determine whether eligible producers and importers favor the issuance, continuance, termination, or suspension of a Honey Research, Promotion, and Consumer Information Order shall be conducted in accordance with this subpart.

§ 1240.201 Definitions.

(a) "Act" means the Honey Research, Promotion, and Consumer Information Act, Pub. L. 98–590, 98th Congress, approved October 30, 1984, 7 U.S.C. 4601–4612.

(b) "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead; and "Department" means the U.S. Department of Agriculture.

(c) "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in Administrator's stead.

(d) "Order" means the order (including an amendment to an order) with respect to which the Secretary has directed that a referendum be conducted.

(e) "Referendum agent" means the individual or individuals designated by the Secretary to conduct the referendum.

(f) "Representative period" means the period designated by the Secretary pursuant to section 12 of the Act.

(g) "Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity. For the purpose of this definition, the term "partnership" includes, but is not limited to: (1) A husband and wife who have title to, or leasehold interest in, honey bee colonies or beekeeping equipment as tenants in common, joint tenants, tenants by the entirety, or under community property laws, as community property, and (2) so-called "joint ventures" wherein one or more parties to the agreement, informal or otherwise, contributed capital and others contribute labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in the production or importation of honey or honey products for market and the authority to transfer title to the honey and honey products so produced or imported.

(h) "Eligible producer" means any person, defined as a producer in the order, engaged in the production of honey or honey products domestically with total sales of 6,000 pounds or more during the representative period and who:

(1) Owns or shares in the ownership of honey bee colonies or beekeeping equipment resulting in the ownership of the honey produced; (2) rents honey bee colonies or beekeeping equipment resulting in the owernship of all or a portion of the honey produced; or (3) owns honey been colonies or beekeeping equipment but does not manage them and, as compensation, obtains the ownership of a portion of the honey produced; (4) is a party in a lessor-lessee relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce honey who share the risk of loss and receive a share of the honey produced. No other acquisition of legal title to honey shall be deemed to result in persons becoming eligible producers.

(i) "Eligible importer" means any person defined as an importer in the order, engaged in the importation of honey and/or honey products with total sales of 6,000 pounds or more during the representative period. Importation occurs when commodities originating outside the States are released from custody of the U.S. Customs Service and introduced into the stream of commerce within the States. Included are persons who hold title to foreign-produced honey and/or honey products immediately upon release by the Customs Service, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of honey and/or honey products from Customs and introduce them into the current of commerce.

(j) "Honey Board" means the administrative board provided for under section 7(c) of the Act.

§ 1240.202 Voting.

(a) Each person who is an eligible producer or importer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to only one vote in the referendum. However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce honey and/or honey products, in which more than one of the parties is a producer, shall be entitled to one vote in the referendum covering only his or her share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of a eligible corporate producer or importer, or an administrator, executor, or trustee of an eligible producing or importing estate may cast a ballot on behalf of such producer, importer or estate. Any individual so voting in a referendum shall certify that he or she is an officer or employee of the eligible producer or importer, or an administrator, executor, or trustee of an eligible producing or importing estate, and that he or she has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) Each eligible producer and importer shall be entitled to cast only one ballot in the referendum.

§ 1240.203 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the time of commencement and termination of the period of the referendum, and the time when all ballots may be cast.

(b) Determine whether ballots may be cast by mail, at polling places, at meetings of producers or importers, or by any combination of the foregoing.

(c) Provide ballots and related material to be used in the referendum.

Ballot material shall provide for recording essential information including that needed for ascertaining (1) whether the person voting, or on whose behalf the vote is cast, is an eligible voter, (2) the amount of honey produced by the voting producer during the representative period, (3) the total volume of honey and/or honey products produced and/or imported during the representative period, and (4) in a joint venture, names of the parties and each one's share of ownership.

(d) Give reasonable advance notice of the referendum (1) by utilizing available media or public information sources without advertising expense (including but not limited to, press and radio facilities) announcing the dates, places, or methods of voting, eligibility requirements, and other pertinent information, and (2) by such other means as said agent may deem advisable.

(e) Make available to eligible producers and importers the instructions on voting, appropriate ballot and certification forms, and, except in the case of a referendum on the termination or continuance of an order, a summary of the terms and conditions of the order: *Provided,* That no person who claims to be eligible to vote shall be refused a ballot.

(f) If ballots are to be cast by mail, cause all the material specified in paragraph (e) of this section to be mailed to each eligible producer and importer whose name and address is known to the referendum agent.

(g) If ballots are to be cast at polling places or meetings, determine the necessary number of polling or meeting places, designate them, announce the time of each meeting or the hours during which each polling place will be open, provide the material specified in paragraph (e) of this section, and provide for appropriate custody of ballot forms and delivery to the referendum agent of ballots cast.

(h) At the conclusion of the referendum, canvass the ballots, tabulate the results, and except as otherwise directed, report the outcome to the Administrator and promptly thereafter submit the following:

(1) All ballots received by the agent and appointees, together with a certificate to the effect that the ballots forwarded are all of the ballots cast and received by such persons during the referendum period;

(2) A list of all challenged ballots deemed to be invalid; and

(3) A tabulation of the results of the referendum and a report thereon, including a detailed statement explaining the method used in giving publicity to the referendum and showing other information pertinent to the manner in which the referendum was conducted.

§ 1240.204 Subagents.

The referendum agent may appoint any person or persons deemed necessary or desirable to assist said agent in performing his or her functions hereunder. Each person so appointed may be authorized by said agent to perform, in accordance with the requirements herein set forth, any or all of the following functions (which, in the absence of such appointment, shall be performed by said agent):

(a) Give public notice of the referendum in the manner specified herein;

(b) Preside at a meeting where ballots are to be cast or as poll officer at a polling place;

(c) Distribute ballots and the aforesaid texts to producers and importers and receive any ballots which are cast; and

(d) Record the name and address of each person receiving a ballot from, or casting a ballot with, said subagent and inquire into the eligibility of such person to vote in the referendum.

§ 1240.205 Ballots.

The referendum agent and his or her appointees shall accept all ballots cast; but, should they, or any of them, deem that a ballot should be challenged for any reason, said agent or appointee shall endorse above his or her signature, on said ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefor, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1240.206 Referendum report.

Except as otherwise directed, the Administrator shall prepare and submit to the Secretary a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 1240.207 Confidential information.

All ballots cast and the contents thereof (whether or not relating to the identity of any person who voted or the manner in which any person voted) and all information furnished to, compiled by, or in possession of, the referendum agent shall be treated as confidential.

Subpart—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From the Honey Research, Promotion, and Consumer Information Order

§ 1240.250 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 1240.251 Definitions.

As used in this subpart, the terms as defined in the Act shall apply with equal force and effect. In addition unless the context otherwise requires:

(a) The term "Act" means the Honey Research, Promotion, and Consumer Information Act, Pub. L. 98–590, 98th Congress, approved October 30, 1984, 7 U.S.C. 4601–4612;

(b) The term "Department" means the U.S. Department of Agriculture;

(c) The term "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereinafter be delegated, to act in the Secretary's stead;

(d) The term "judge" means any Administrative Law Judge in the Office of Administrative Law Judges, U.S. Department of Agriculture;

(e) The term "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated, or may hereafter be delegated, to act in the Administrator's stead;

(f) The term "order" means any order or any amendment thereto which may be issued pursuant to the Act;

(g) The term "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or other entity subject to an order or to whom an order is sought to be made applicable, or on whom an obligation has been imposed or is sought to be imposed under an order;

(h) The term "proceeding" means a proceeding before the Secretary arising under Section 10 of the Act;

(i) The term "hearing" means that part of the proceeding which involves the submission of evidence;

(j) The term "party" includes the Department;

(k) The term "hearing clerk" means the Hearing Clerk, U.S. Department of Agriculture, Washington, DC;

(l) The term "decision" means the judges report to the Secretary and includes the judge's proposed (1)

findings of fact and conclusions with respect to all material issues of fact, law or discretion, as well as the reasons or basis therefor, (2) order, and (3) rulings on findings, conclusions, and orders submitted by the parties; and

(m) The term "petition" includes an amended petition.

§ 1240.252 Institution of proceeding.

(a) *Filing and service of petitions.* Any person subject to an order desiring to complain that any order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law, shall file with the hearing clerk, in quintuplicate, a petition in writing addressed to the Secretary. Promptly upon receipt of the petition, the hearing clerk shall transmit a true copy thereof to the Administrator and the General Counsel, respectively.

(b) *Contents of petitions.* A petition shall contain:

(1) The correct name, address, and principal place of business of the petitioner. If the petitioner is a corporation, such fact shall be stated, together with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions held by its officers and directors; if an unincorporated association, the names and addresses of its officers, and the respective positions held by them; if a partnership; the name and address of each partner;

(2) Reference to the specific terms or provisions of the order, or the interpretation or application thereof, which are complained of;

(3) A full statement of the facts (avoiding a mere repetition of detailed evidence) upon which the petition is based, and which it is desired that the Secretary consider, setting forth clearly and concisely the nature of the petitioner's business and the manner in which petitioner claims to be affected by the terms or provisions of the order or the interpretation or application thereof, which are complained of;

(4) A statement on the grounds on which the terms or provisions of the order, or the interpretation or application thereof, which are complained of, are challenged as not in accordance with law; and

(5) Requests for the specific relief which the petitioner desires the Secretary to grant.

(c) *A motion to dismiss petition—(1) Filing, contents, and responses thereto.* If the Administrator is of the opinion that the petition, or any portion thereof, does not substantially comply, in form or content, with the Act or with requirements of paragraph (b) of this section, the Administrator may, within 30 days after the filing of the petition, file with the hearing clerk a motion to dismiss the petition, or any portion thereof, on one or more of the grounds stated in this paragraph. Such motion shall specify the grounds of objection to the petition and if based, in whole or in part, on allegations of fact not appearing on the face of the petition, shall be accompanied by appropriate affidavits or documentary evidence substantiating such allegations of fact. The motion may be accompanied by a memorandum of law. Upon receipt of such motion, the hearing clerk shall cause a copy thereof to be served upon the petitioner, together with a notice stating that all papers to be submitted in opposition to such motion, including any memorandum of law, must be filed by the petitioner with the hearing clerk not later than 20 days after the service of such notice upon the petitioner. Upon the expiration of the time specified in such notice, or upon receipt of such papers from the petitioner, the hearing clerk shall transmit all papers which have been filed in connection with the motion to the judge for his/her consideration.

(d) *Further proceedings.* Further proceedings on petitions to modify or to be exempted from the order shall be governed by §§ 900.52(c)(2) through 900.71 of this title (Rules of Practice Governing Proceedings on Petitions to Modify or to be Exempted From Marketing Orders) and as may hereafter be amended, and the same are incorporated herein and made a part hereof by reference. However, each reference to "marketing order" in the title shall mean "order."

Dated: March 26, 1986.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 86-7102 Filed 4-1-86; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 85-012]

Importation of Elephants, Hippopotami, Rhinoceroses, and Tapirs

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: Elephants, hippopotami, rhinoceroses, and tapirs offered for importation into the United States present a significant risk of carrying ectoparasites (such as ticks, mites, and lice) which are vectors of communicable diseases of livestock. This document proposes to establish regulations to regulate the importation into the United States of elephants, hippopotami, rhinoceroses, and tapirs in order to protect domestic livestock in the United States from communicable diseases that could be transmitted to them from such ectoparasites.

DATE: Written comments must be received on or before June 2, 1986.

ADDRESS: Written comments concerning this proposed rule should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in reference to Docket Number 85-012. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. C. A. Gipson, Special Diseases Staff, VS, APHIS, USDA, Room 826, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8321.

SUPPLEMENTARY INFORMATION

Background

The regulations of 9 CFR Subchapter D, among other things, regulate the importation into the United States of certain animals in order to help prevent the introduction into the United States of various diseases of livestock. The regulations currently do not regulate the importation of elephants, hippopotami, rhonoceroses, or tapirs. This document proposes to amend Subchapter D by adding a new Part 93 to regulate the importation of elephants, hippopotami, rhinoceroses, and tapirs. It appears to be necessary to regulate the importation of these animals in order to protect domestic livestock in the United States from communicable diseases.

Based on research and experience, it has been determined that elephants, hippopotami, rhinoceroses, and tapirs offered for importation into the United States present a significant risk of carrying ectoparasites (such as ticks, mites, and lice) which are vectors of communicable diseases of livestock. For example, five rhinoceroses imported into the United States in 1984 were found to be infested with *Amblyomma hebraeum*, a tick which is a vector of heartwater and tick typhus. Both of these diseases infect domestic cattle.

Also, it appears that elephants, hippopotami, rhonoceroses, and tapirs offered for importation into the United States present an increasing risk of being the means of causing communicable diseases in livestock. The practice of placing these animals on ranches and rangeland, rather than in zoological parks has been expanding. This allows these animals to live in areas similar to their native habitat, where they can roam freely and breed. However, the practice of allowing these animals to live on ranches and rangeland has significantly increased the risk of these animals being close to livestock where ectoparasites on the elephants, hippopotami, rhinoceroses, and tapirs could transmit communicable diseases in the livestock.

Therefore, this document proposes to establish a new Part 93 to allow the importation of elephants, hippopotami, rhinoceroses, and tapirs only if certain requirements are met to ensure that the animals would not carry ectoparasites.

Definitions

Proposed § 93.1 contains definitions of the terms "Deputy Administrator," "Enter (entered, entry) into the United States," "Import (imported, importation) into the United States," "Incinerate (incinerated)," "Inspector," "Person," "United States," and "Veterinary Services."

Prohibitions

Proposed § 93.2 provides that an elephant, hippopotamus, rhinoceros, or tapir shall not be imported or entered into the United States unless in accordance with the provisions of the proposed regulations.

Import Permit

Proposed § 93.3 provides that:

(a) An elephant, hippopotamus, rhinoceros, or tapir shall not be imported into the United States unless accompanied by an import permit issued by Veterinary Services and unless imported into the United States within 14 days after the proposed date of arrival stated in the import permit.

(b) An application for an import permit must be submitted to Import-Export Animals and Products Staff, Veterinary Services, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. An application form for an import permit may be obtained from this staff.

(c) The completed application shall include the following information:

(1) The name and address of the person intending to export an elephant, hippopotamus, rhinoceros, or tapir to the United States;

(2) The name and address of the person intending to import an elephant, hippopotamus, rhinoceros, or tapir into the United States;

(3) The species, breed, and number of elephants, hippopotami, rhinoceroses, or tapirs to be imported;

(4) The purpose of the importation;

(5) The port of embarkation;

(6) The name of the pesticide intended to be used to treat the elephant, hippopotamus, rhinoceros, or tapir for ectoparasites, and the concentration to be used prior to the animal being transported to the United States;

(7) The mode of transportation;

(8) The route of travel;

(9) The port of entry in the United States and, if applicable, the address of the facility to be provided by the importer for inspection, treatment, and incineration pursuant to § 93.6;

(10) The proposed date of arrival in the United States; and

(11) The name and address of the person to whom the elephant, hippopotamus, rhinoceros, or tapir will be delivered in the United States.

(d) After receipt and review of the application by Veterinary Services, an import permit indicating the applicable conditions under this part for importation into the United States shall be issued for the importation of the elepant, hippopotamus, rhinoceros, or tapir described in the application if such animal appears to be eligible to be imported. Even though an import permit has been issued for the importation of an elephant, hippopotamus, rhinoceros, or tapir, the animal may be imported only if all applicable requirements of this part are met.

It appears that an import permit would be necessary to ensure that the requirements for an importation of elephants, hippopotami, rhinoceroses, and tapirs would be understood and met by the importer. The information required for completion of an application appears to be necessary for Veterinary Services to determine whether such animals would be eligible for an import permit, to respond to an applicant, to help identify the animals at the port of entry, to ensure that inspectors and facilities are available for inspection, treatment, and incineration in the United States, and to allow Veterinary Services to contact appropriate persons if any questions arise concerning the importation. Further, providing that the importation must be within 14 days after the proposed date of arrival stated on the permit would help Veterinary Services project workloads and still allow for reasonable delays during shipment.

The application would be submitted to the Import-Export Animals and Products Staff since this staff would be responsible for determining whether such animals would be eligible for an import permit.

Health Certificate

Proposed § 93.4 provides that:

(a) An elephant, hippopotamus, rhinoceros, or tapir shall not be imported into the United States unless accompanied by a health certificate either signed by a salaried veterinarian of the national veterinary services of the country where the inspection and treatment required by this section occurred or signed by a veterinarian authorized by the national veterinary services of such country and endorsed by a salaried veterinarian of the national veterinary services of such country (the endorsement representing that the veterinarian signing the health certificate was authorized to do so), certifying:

(1) That the elephant, hippopotamus, rhinoceros, or tapir was inspected by the individual signing the health certificate and found free of any ectoparasites within 72 hours prior to being loaded on the means of conveyance which transported the animal to the United States;

(2) That the elephant, hippopotamus, rhinoceros, or tapir was treated for ectoparasties within 3 to 14 days prior to being loaded on the means of conveyance which transported the animal to the United States by being thoroughly wetted with a pesticide using either a sparyer with a hand-held nozzle or a spary-dip machine;

(3) The name of the pesticide and the concentration used to treat the animnal (such pesticide and the concentration used must have been approved by the Deputy Administrator as adequate to kill the types of ectoparasties determined by the Deputy Administrator as likely to infest the animal to be imported); and

(4) The name and address of the consignor and consignee.

It appears that these health certificate provisions are necessary to help Veterinary Services personnel at the port of entry determine if the animals offered for entry into the United States meet the requirements set forth in the proposed part.

The inspection and treatment provisions of proposed § 93.4 appear to be necessary to help ensure that the animals are free of ectoparasites when they are shipped to the United States.

As noted above, the pesticide used and the concentration used to treat the animal must have been approved by the Deputy Administrator. This appears to be necessary to ensure that the pesticide used would be adequate to kill the types of ectoparasites determined by the Deputy Administrator as likely to infest the animal to be imported.

Also, it appears necessary that the health certificate specify the name and address of the consignor and consignee. This would allow Veterinary Services to contact appropriate persons if any questions arise concerning the importation.

Declaration Upon Arrival

Proposed § 93.5 provides that:

Upon arrival of an elephant, hippopotamus, rhinoceros, or tapir at a port of entry, the importer or the importer's agent shall notify Veterinary Services of the arrival by giving an inpsector a document stating:

(a) The port of entry,

(b) The date of arrival,

(c) The import permit number,

(d) The name of the carrier and identification of the means of conveyance,

(e) The name and address of the importer,

(f) The name of address of the broker,

(g) The country from which the elephant, hippopotamus, rhinoceros, or tapir was shipped,

(h) The number, species, and purpose of importation of the elephant, hippopotamus, rhinoceros, or tapir, and

(i) The name and address of the person to whom the elephant, hippopotamus, rhinoceros, or tapir will be delivered.

It appears that compliance with these provisions would be adequate to notify Veterinary Services of the arrival of the animals at the port of entry. Also, the declaration would provide sufficient information so that if questions arose concerning the importation, Veterinary Services would be able to contact persons in the United States who would have information relating to the importation.

Ports of Entry, Inspection, and Treatment

Proposed § 93.6 provides, in part, that:

(a) An elephant, hippopotamus, rhinoceros, or tapir shall be imported into the United States only:

(1) At a port of entry determined by the Deputy Administator to have adequate facilities for inspection, treatment, and incineration under this section and to have inspectors available to perform such services as would be necessary under this section, or

(2) At a port of entry determined by the Deputy Administrator to have inspectors available to perform the services necessary to be performed under this section if the animal is to be moved to a location provided by the importer and such location has been determined by the Deputy Administrator to have adquate facilities for inspection, treatment, and incineration under this section and to have inspectors available to perform the services that would be necessary to be performed under this section.

(b) As a condition of entry into the United States of an elephant, hippopotamus, rhinoceros, or tapir, the following shall be met:

(1) Any documents accompanying the animal shall be subject to inspection by an inspector at the port of entry;

(2) The animal shall be inspected and treated at the port of entry or at a facility provided by the importer, as follows:

(i) The animal shall be removed from its shipping crate, placed on a concrete or other non-porous surface, and physically inspected for ectoparasites by an inspector;

(ii) If upon such inspection no ectoparasites are found, the animal shall be treated one time in accordance with label instructions with a permitted dip listed in § 72.13(b) of this chapter, or

(iii) If upon such inspection ectoparasites are found, the animal shall be treated in accordance with label instructions with a permitted dip listed in § 72.13(b) of this chapter for as many times as necessary until upon inspection no ectoparasites are found; and thereafter the animal shall be treated in accordance with label instructions with a permitted dip listed in § 72.13(b) of this chapter for one additional time; and

(3) All hay, straw, feed, bedding, and other material that has been placed with the animal at any time prior to the final treatment referred to in paragraphs (b)(2)(ii) and (iii) of this section, and any plastic sheet used to wrap the shipping crate, shall be incinerated.

(4) At the option of the importer, the shipping crate shall, under the direct supervision of an inspector, be either incinerated, or cleaned and disinfected using a disinfectant listed in § 71.10 of this chapter; and, if the shipping crate is cleaned and disinfected, it shall then be treated with a permitted dip listed in § 72.13(b) of this chapter.

(5) If the animal is to be moved from the port of entry to a facility provided by the imported:

(i) At the port of entry the animal shall be subject to as much inspection by an inspector and treatment with a permitted dip listed in § 72.13(b) of this chapter as is feasible (the cnditions of paragraph (b)(2) fo this section must also be fully met at the facility provided by the importer);

(ii) At the port of entry as much hay, straw, feed, bedding, and other material as can feasibley be removed from the shipping crate shall be removed and incinerated by the importer;

(iii) At the port of entry the shipping crate or the vehicle containing the animal shall be sealed by an inspector with an official seal of the United States Department of Agriculture;

(iv) The animal shall be moved in a shipping crate from the port of entry to such facility provided by the importer with plastic fastened around the shipping crate so that all animal waste, hay, straw, feed, bedding, and other material accompanying the animal are retained inside the crate, but not so as to interfere with ventilation, feeding, and watering of the animal.

(v) After the arrival of the animal at the facility provided by the importer, the seal shall be broken by an inspector.

As noted above, § 93.4 of the proposed regulations would require that elephants, hippopotamus, rhinoceroses, or tapirs be inspected and treated for ectoparasites prior to shipment to the United States. However, these provisions may not be adequate to ensure that the animals are free of ectoparasites. The treatment in the foreign country may not have been adequate to kill all ectoparasites on the animal. Also, the animal could become infested during transit to the United States. Therefore, it appears to be necessary to require that the animals be inspected and treated as a condition of entry into the United States.

The proposed regulations are designed to allow the animals to be imported only if facilities would be available at the port of entry or at a facility provided by the importer for inspection and treatment of the animals and for incineration of those items that could carry ectoparasites. The proposed regulations are also designed to allow the animals to be imported only if inspectors would be available to perform the services that would have to be performed under proposed § 93.6.

The provisions of proposed paragraph (b) are designed to ensure that the animals are free of ectoparasites at the time of entry into the United States.

In order to adequately inspect an animal it would be necessary to remove it from its crate. Further, as a precautionary measure to help ensure that the animal is free of ectoparasites, it appears that it is necessary to treat the animal one time after it has been inspected and found to be free of ectoparasites. Also, it appears to be necessary to conduct such inspection and treatment of the animal while it is on a concrete or other non-porous surface. This would help ensure that no ectoparasties escape, and that the area can be thoroughly cleaned and disinfected to kill any ectoparasites which fall off the animal.

The proposed provisions to require incineration or cleaning, disinfection, and treatment of certain items appear to be necessary to ensure that any ectoparasites carried by these items would be destroyed.

The proposed provisions concerning the movement of animals to a facility provided by the importer appear to be necessary to ensure that no ectoparasites contained in the shipping crate escape and to ensure that the animals are not offloaded during movement from the port of entry to such facility, thereby also helping to ensure that ectoparasites do not escape during such movement.

Also, it should be noted that it is proposed to require that any documents accompanying such animals shall be subject to inspection by an inspector at a port of entry. This would be necessary to help make determinations concerning eligibility of the animals for entry.

Further, a footnote is added to state that importers must also meet all requirements of the U.S. Department of the Interior regulations relevant to the importation of elephants, hippopotami, rhinoceroses, and tapirs, including regulations concerning ports of entry.

Animals Refused Entry

Proposed § 93.7 provides that: Any elephant, hippopotamus, rhinoceros, or tapir refused entry into the United States for noncompliance with the requirements of this part shall be removed from the United States within a time period specified by the Deputy Administrator or abandoned by the importer, and pending such action shall be subject to such safeguards as the inspector determines necessary to prevent the possible introduction into the United States of ectoparasites. If such animal is not removed from the United States within such time period or is abandoned, it may be seized, destroyed, or otherwise disposed of as the Deputy Administrator determines necessary to prevent the possible introduction into the United States of ectoparasites.

These provisions appear to be necessary as precautionary measures against the introduction into the United States of communicable diseases of animals transmitted by ectoparasites.

Other Importations

Proposed § 93.8 provides that: Notwithstanding other provisions in this part, the Deputy Administrator may in specific cases allow the importation and entry into the United States of elephants, hippopotami, rhinoceroses, or tapirs other than as provided for in this part under such conditions as the Deputy Administrator may prescribe to prevent the introduction into the United States of ectoparasites.

These provisions appear to be necessary to allow the importation and entry of elephants, hippopotami, rhinoceroses, or tapirs in unforeseen circumstances when the Deputy Administrator determines that such action can be taken without a significant risk of introducing communicable animal diseases into the United States.

Executive Order 12291 and Regulatory Flexibility Act

This proposed rule has been reviewed in accordance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this rule would not have a significant impact on the economy; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Based on statistics concerning past importations of elephants, hippopotami, rhinoceroses, and tapirs, it is anticipated that fewer than 100 of these animals would be imported annually into the United States. Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entitites.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the information collection provisions that are included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Written comments concerning any collection provisions should be submitted to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. A duplicate copy of such comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

List of Subjects in 9 CFR Part 93

Animal diseases, Ectoparasites, Elephants, Hippopotami, Imports, Livestock and livestock products, Rhinoceroses, Tapirs, Transportation, and Wildlife.

Miscellaneous

9 CFR Part 93 is currently entitled "Rules of practice governing proceedings under certain acts." For administrative reasons, the current Part 93 will be redesignated and moved to another part of Title 9, Subchapter D.

Accordingly, it is proposed to amend Chapter I, Subchapter D of 9 CFR by adding a new Part 93 to read as follows:

PART 93—IMPORTATION OF ELEPHANTS, HIPPOPOTAMI, RHINOCEROSES, AND TAPIRS

Sec.

Authority: 21 U.S.C. 111, 134a, 134b, 134c, 134d, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 93.1 Definitions.

The following terms, when used in this part, shall be construed as defined. Those terms used in the singular form in this part shall be construed as the plural form and vice versa, as the case may demand.

Deputy Administrator. The Deputy Administrator, Veterinary Services, or any offical in Veterinary Services to whom authority has been delegated or may hereafter be delegated to act in the Deputy Administrator's stead.

Enter (entered, entry) into the United States. To introduce into the commerce of the United States after release from government detention.

Import (imported, importation) into the United States. To bring into the territorial limits of the United States.

Incinerate (incinerated). To reduce to ash by burning.

Inspector. An employee of Veterinary Services who is authorized to perform the function involved.

Person. Any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other legal entity.

United States. All of the several States of the United States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other territories and possessions of the United States.

Veterinary Services. The Veterinary Services unit of the Animal and Plant Health Inspection Service of the United States Department of Agriculture.

§ 93.2 Prohibitions.

An elephant, hippopotamus, rhinoceros, or tapir shall not be imported or entered into the United States unless in accordance with this part.

§ 93.3 Import permit.

(a) An elephant, hippopotamus, rhinoceros, or tapir shall not be imported into the United States unless accompanied by an import permit issued by Veterinary Services and unless imported into the United States within 14 days after the proposed date of arrival stated in the import permit.

(b) An application for an import permit must be submitted to Import-Export Animals and Products Staff, Veterinary Services, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hayattsville, MD 20782. An application

form for an import permit may be obtained from this staff.

(c) The completed application shall include the following information:

(1) The name and address of the person intending to export an elephant, hippopotamus, rhinoceros, or tapir to the United States;

(2) The name and address of the person intending to import an elephant, hippopotamus, rhinoceros, or tapir into the United States;

(3) The species, breed, and number of elephants, hippopotami, rhinoceroses, or tapirs to be imported;

(4) The purpose of the importation;

(5) The port of embarkation;

(6) The name of the pesticide intended to be used to treat the elephant, hippoptamus, rhinoceros, or tapir for ectoparasites, and the concentration to be used prior to the animal being transported to the United States;

(7) The mode of transportation;

(8) The route of travel;

(9) The port of entry in the United States and, if applicable, the address of the facility to be provided by the importer for inspection, treatment, and incineration pursuant to § 93.6;

(10) The proposed date of arrival in the United States; and

(11) The name and address of the person to whom the elephant, hippopotamus, rhinoceros, or tapir will be delivered in the United States.

(d) After receipt and review of the application by Veterinary Services, an import permit indicating the applicable conditions under this part for importation into the United States shall be issued for the importation of the elephant, hippopotamus, rhinoceros, or tapir descrbied in the application if such animal appears to be eligible to be imported. Even though an import permit has been issued for the importation of an elephant, hippopotamus, rhinoceros, or tapir, the animal may be imported only if all applicable requirements of this part are met.

§ 93.4 Health certificate.

(a) An elephant, hippopotamus, rhinoceros, or tapir shall not be imported into the United States unless accompanied by a health certificate either signed by a salaried veterianarian of the national veterinary services of the country where the inspection and treatment required by this section occurred or signed by a veterinarian authorized by the national veterinary services of such country and endorsed by a salaried veterinarian of the national veterinary services of such country (the endorsement representing that the veterinarian signing the health certificate was authorized to do so), certifying:

(1) That the elephant, hippopotamus, rhinoceros, or tapir was inspected by the individual signing the health certificate and found free of any ectoparasites within 72 hours prior to being loaded on the means of conveyance which transported the animal to the United States;

(2) That the elephant, hippopotamus, rhinoceros, or tapir was treated for ectoparasites within 3 to 14 days prior to being loaded on the means of conveyance which transported the animal to the United States by being thoroughly wetted with a pesticide using either a sprayer with a hand-held nozzle or a spray-dip machine;

(3) The name of the pesticide and the concentration used to treat the animal (such pesticide and the concentration used must have been approved by the Deputy Administrator as adequate to kill the types of ectoparasites determined by the Deputy Administrator as likely to infest the animal to be imported); and

(4) The name and address of the consignor and consignee.

§ 93.5 Declaration upon arrival.

Upon arrival of an elephant, hippopotamus, rhinoceros, or tapir at a port of entry, the importer or the importer's agent shall notify Veterinary Services of the arrival by giving an inspector a document stating:

(a) The port of entry,

(b) The date of arrival,

(c) The import permit number,

(d) The name of the carrier and identification of the means of conveyance,

(e) The name and address of the importer,

(f) The name and address of the broker,

(g) The country from which the elephant, hippopotamus, rhinoceros, or tapir was shipped,

(h) The number, species, and purpose of importation of the elephant, hippopotamus, rhinoceros, or tapir, and

(i) The name and address of the person to whom the elephant, hippopotamus, rhinoceros, or tapir will be delivered.

§ 93.6 Ports of entry, inspection, and treatment.[1]

(a) An elephant, hippopotamus, rhinoceros, or tapir shall be imported into the United States only:

(1) At a port of entry determined by the Deputy Administrator to have adequate facilities for inspection, treatment, and incineration under this section and to have inspectors available to perform such services was would be necessary under this section, or

(2) At a port of entry determined by the Deputy Administrator to have inspectors available to perform the services necessary to be performed under this section if the animal is to be moved to a location provided by the importer and such location has been determined by the Deputy Administrator to have adequate facilities for inspection, treatment, an incineration under this section and to have inspectors available to perform the services that would be necessary to be performed under this section.

(b) As a condition of entry into the United States of an elephant, hippopotamus, rhinoceros, or tapir, the following shall be met:

(1) Any documents accompanying the animal shall be subject to inspection by an inspector at the port of entry;

(2) The animal shall be inspected and treated at the port of entry or at a facility provided by the importer, as follows:

(i) The animal shall be removed from its shipping crate, placed on a concrete or other non-porous surface, and physically inspected for ectoparasites by an inspector;

(ii) If upon such inspection ectoparasites are found, the animal shall be treated one time in accordance with label instructions with a permitted dip listed in § 72.13(b) of this chapter, or

(iii) If upon such inspection ectoparasites are found, the animal shall be treated in accordance with label instructions with a permitted dip listed in § 72.13(b) of this chapter for as many times as necessary until upon inspection no ectoparasites are found; and thereafter the animal shall be treated in accordance with label instructions with a permitted dip listed in § 72.13(b) of this chapter for one additional time; and

(3) All hay, straw, feed, bedding, and other material that has been placed with the animal at any time prior to the final treatment referred to in paragraph (b)(2)(ii) and (iii) of this section, and any plastic sheet used to wrap the shipping crate, shall be incinerated.

(4) At the option of the importer, the shipping crate shall, under the direct supervision of an inspector, be either incinerated, or cleaned and disinfected using a disinfectant listed in § 71.10 of this chapter; and if the shipping crate is cleaned and disinfected, it shall then be

[1] Importers must also meet all requirements of the U.S. Department of the Interior regulations relevant to the importation of elephants, hippopotami, rhinoceroses, and tapirs, including regulations concerning ports of entry.

treated with a permitted dip listed in § 72.13(b) of this chapter.

(5) If the animal is to be moved from the port of entry to a facility provided by the importer:

(i) At the port of entry the animal shall be subject to as much inspection by an inspector and treatment with a permitted dip listed in § 72.13(b) of this chapter as is feasible (the conditions of paragraph (b)(2) of this section must also be fully met at the facility provided by the importer);

(ii) At the port of entry as much hay, straw, feed, bedding, and other material as can feasibly be removed from the shipping crate shall be removed and incinerated by the importer;

(iii) At the port of entry the shipping crate or the vehicle containing the animal shall be sealed by an inspector with an official seal of the United States Department of Agriculture;

(iv) The animal shall be moved in a shipping crate from the port of entry to such facility provided by the importer with plastic fastened around the shipping crate so that all animal waste, hay, straw, feed, bedding, and other material accompanying the animal are retained inside the crate, but not so as to interfere with ventilation, feeding, and watering of the animal.

(v) After the arrival of the animal a the facility provided by the importer, the seal shall be broken by an inspector.

§ 93.7 Animals refused entry.

Any elephant, hippopotamus, rhinoceros, or tapir refused entry into the United States for noncompliance with the requirements of this part shall be removed from the United States within a time period specified by the Deputy Administrator or abandoned by the importer, and pending such action shall be subject to such safeguards as the inspector determines necessary to prevent the possible introduction into the United States of ectoparasites. If such animal is not removed from the United States within such time period or is abandoned, it may be seized, destroyed, or otherwise disposed of as the Deputy Administrator determines necessay to prevent the possible introduction into the Untied States of ectoparasites.

§ 93.8 Other importations.

Notwithstanding other provisions of this part, the Deputy Administrator may in specific cases allow the importation and entry into the United States of elephants, hippopotami, rhinoceroses, or tapirs other than as provided for in this part under such conditions as the Deputy Administrator may prescribe to prevent the introduction into the United States of ectoparasites.

Done at Washington, DC, this 28th day of March 1986.

J. K. Atwell,

Deputy Administrator Veterinary Services.

[FR Doc. 86-7276 Filed 4-1-86; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-05-AD]

Airworthiness Directives; Fokker Model F27 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require inspection, and modification or replacement, as necessary, of the hinge installations on the forward cabin partition bulkhead and door of certain Fokker F27 series airplanes to prevent the possible blockage of the doorway. One case was reported of a partially blocked evacuation path through the doorway caused by the detached door during a crash landing. The blockage was attributed to cabin floor deformation which lifted the door, to a lift-off hinge arrangement and to door inertia. Blockage of an evacuation path would adversely affect evacuation.

DATE: Comments must be received on or before May 25, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 86-NM-05-AD, 17900 Pacific Highway South, C68966, Seattle, Washington 98168. The applicable service information may be obtained from the manager of Maintenance and Engineering, Fokker B.V., Product Support, P.O. Box 7600, 11172J Schiphol Oost, the Netherlands. It may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark E. Baldwin, Standardization Branch, ANM-113; telephone (206) 431-2978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned by the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 86-NM-05-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Ministerie van Verkeer en Waterstaat, Rijksluchtvaartdienst (RLD), the Civil Aviation Authority of the Netherlands, has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition that may exist on certain Fokker F27 airplanes. The hinge arrangement on some forward cabin partitions and doors does not restrain the door from being lifted off the lower portion of the hinges when the door is open for takeoff and landing. In one report of a crash landing of a Model F27, cabin floor deformation and door inertia caused the door to become detached and partially block the doorway. The doorway is intended to be an evacuation path in these circumstances. Door detachment under other similar conditions could result in the door becoming a loose object and causing occupant injury. Fokker issued Service Bulletin F27/25-58 dated December 20, 1985, to provide a modification of the partitions and doors to replace the two-part lift-off hinges

with positive locking hinges. The replacement hinges also allow the door to be quickly removed. The service bulletin applies to those Fokker Model F27 airplanes which were delivered by Fokker with lift-off hinges. The RLD issued an airworthiness directive on January 10, 1986, to make the modifications mandatory for all F27 airplanes registered in the Netherlands. Information obtained by the FAA, during investigation of hinge arrangements, indicated that several airplanes may have hinge installations that have been modified over the relatively long period the Fokker Model F27 series has been in service. The airplane involved in the crash landing is one such case, in that the original piano type hinge had been replaced by lift-off hinges.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist on airplanes of this model registered in the United States, an AD is proposed that would require modification of Fokker Model F27 series airplanes in accordance with the Fokker service bulletin previously mentioned.

It is estimated that there are 40 airplanes on the U.S. Register which would be affected by this AD, and that it would take approximately one-half hour per airplane for the required inspection. Approximately one-half of the airplanes would require modification, which would take 10 manhours per airplane to accomplish. The average labor cost would be $40 per manhour. Repair parts are estimated at $30 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $9,400.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($20 per airplane for the required inspections and an additional $430 for those airplanes requiring modification). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects—14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Fokker B.V.: Applies to all Model F27 airplanes, certificated in any category, equipped with a forward cabin bulkhead and door between the passenger cabin and the cargo compartment. Compliance required within 120 days after the effective date of this AD, unless already accomplished. To preclude blockage of the evacuation path through the forward cabin bulkhead door, accomplish the following:

A. Inspect the door hinges to determine if the hinge design prevents the door from being lifted off the lower portion of the hinges, with the door opened. If so, no further action is required.

B. If the hinge design permits the opened door to be lifted off the lower portion of the hinges, modify the hinge installation:

1. In accordance with Fokker Service Bulletin F27/25-58, dated December 20, 1985, for airplanes with the serial numbers to which the service bulletin applies, provided other hinge installation modifications made since initial delivery do not preclude that modification; or

2. To another FAA-approved Fokker F27 configuration which would prevent the door, when open, from being lifted off the lower portion of the hinges.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Manager, Maintenance and Engineering, Fokker B.V., Product Support, P.O. Box 7600, 1117ZJ Schiphol Oost, The Netherlands. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on March 26, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-7209 Filed 4-1-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-NM-16-AD]

Airworthiness Directives; McDonnell Douglas Model DC-10-10, -10F, -15, -30, -30F, -40, and KC-10A (Military) Series Airplanes.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) that would require modification of the right-hand forward passenger door partition shroud panel assemblies on McDonnell Douglas Model DC-10 and KC-10A (Military) series airplanes. This action is prompted by reports in production that an interference condition could occur when moving the forward door handle to the emergency position. This proposed AD is necessary to minimize the potential for interference between the right-hand forward door handle and the shroud, which could result in the loss of use of one emergency door exit.

DATE: Comments must be received no later than May 25, 1986.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 86-NM-16-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Edward S. Chalpin, Aerospace Engineer, Systems & Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft

Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548–2831.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communication received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 86–NM–16–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The manufacturer has reported that an interference condition could occur on McDonnell Douglas DC–10 series airplanes when moving the right-hand forward passenger door handle to the emergency position. It is possible for the handle to contact an adjacent shroud due to a slight flexing of the shroud; this action can result in jamming of the door. Although no in-service reports of interference have been received, the emergency operation of the door would be jeopardized if this condition should occur.

McDonnell Douglas issued Service Bulletin 25–339 on December 4, 1985, which describes a modification of both the left-hand and right-hand door partition shroud panel assemblies and replacement of the escutcheon assemblies. This service bulletin also describes a procedure where the shroud is cut back to allow a greater clearance for the movement of the door handle. Trimming of the shroud in this manner to increase the handle clearance will minimize the potential of contact between handle and shroud. The design of the left-hand door handle and shroud assembly is such that a critical interference problem does not exist.

Since this condition is likely to exist or develop on other airplanes of the same type design, an AD is being proposed which would require modification of the right-hand forward passenger door partition shroud panel assemblies on McDonnell Douglas DC–10 and KC–10A (military) series airplanes in accordance with the previously mentioned service bulletin.

It is estimated that 105 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The cost of modification parts is estimated to be $371 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $43,155.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model DC–10 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a); 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC–10–10, –10F, –15, –30, –30F, –40, and KC–10A (Military) series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To assure proper operation of the right hand forward passenger emergency exit operating handle, accomplish the following:

A. Within the next 12 months after the effective date of this AD, modify, reidentify, and reinstall the right-hand forward door assembly and escutcheon assembly in accordance with the Accomplishment Instructions of McDonnell Douglas DC–10 Service Bulletin 25–339, dated December 4, 1985, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this proposal who have not already received the appropriate service document from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–750 (54–60). This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on March 26, 1986.

Wayne J. Barlow,

Deputy Director, Northwest Mountain Region.

[FR Doc. 86–7210 Filed 4–1–86; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR–3–77]

Recapture of Overall Foreign Losses; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the recapture of overall foreign losses.

DATES: The public hearing will be held on Thursday, June 5, 1986, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Thursday, May 22, 1986.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-3-77), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Faye Easley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, telephone 202-566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 904 (f) of the Internal Revenue Code of 1954. The proposed regulations appeared in the **Federal Register** for Friday, January 24, 1986 (51 FR 3193).

The rules of §601.601 (a) (3) of the "Statement of Procedural Rules" (26 Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Thursday, May 22, 1986, an outline of oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions attendees cannot be admitted beyond the lobby of the Internal Revenue Building unitl 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Paul A. Francis,

Acting Director, Legislation and Regulations Division.

[FR Doc. 86-7275 Filed 4-1-86; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

Recapture of Overall Foreign Losses

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to proposed rule.

SUMMARY: This document contains a correction to the **Federal Register** publication beginning at 51 FR 3193 (January 24, 1986) of the proposed regulations relating to the recapture of overall foreign losses.

FOR FURTHER INFORMATION CONTACT: Dale Goode of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:LR:T, telephone 202-566-3935 (not a toll-free number).

Background

On January 24, 1986, the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 904(f) of the Internal Revenue Code of 1954. These amendments were proposed to conform the regulations to section 1032 of the Tax Reform Act of 1976 (90 Stat. 917, 1624).

Need for Correction

As published, the notice of proposed rulemaking incorrectly states the paragraph "2" rather than the paragraph "3" in the preamble, in the seventh line under the caption "DATES" in the first column of page 3193, and again in the preamble, in the 12th line under the caption "SUPPLEMENTARY INFORMATION" in the first column of page 3193.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking which was the subject of FR Doc. 86-1468, is corrected as follows:

Paragraph 1. On page 3193, in the preamble, in the first column, under the caption "DATES", in the seventh line, the language "2" is removed at the end of the line, and the language "3" is added in its place.

Paragraph 2. On page 3193, in the preamble, in the first column, under the caption "SUPPLEMENTARY INFORMATION", in the twelfth line, the language "2" is removed, and the language "3" is added in its place.

Paul A. Francis,

Acting Director, Legislation and Regulations Division.

[FR Doc. 86-7274 Filed 4-1-86; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: This notice extends to June 3, 1986, the comment period on the advance notice of proposed rulemaking (ANPR) concerning platform removal following termination of operations in the Outer Continental Shelf. The extension of the comment period is the result of a determination by the Minerals Management Service (MMS) that the number and complexity of issues in the ANPR warrant additional time for interested parties to respond.

DATE: Comments must be postmarked or received on or before June 3, 1986.

ADDRESS: Comments should be mailed or hand delivered to the Department of the Interior; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646, Room 6A110; Reston, Virginia 22019; Attention: Norman J. Hess.

FOR FURTHER INFORMATION CONTACT: Norman J. Hess, telephone: (703) 648-7816.

SUPPLEMENTARY INFORMATION: On March 5, 1986, MMS published an ANPR in the **Federal Register** (51 FR 7584) giving notice of its intention to revise its rules concerning platform removal and to request information and comments on the objectives outlined in the ANPR. The comment period was for 30 days. The revised comment period is for a period of 90 days.

Dated: March 26, 1986.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 86-7295 Filed 4-1-86; 8:45 am]

BILLING CODE 4310-MR-M

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual; Eligibility To Mail Issues of a Publication at Second-Class Rates

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: On March 14, 1986, after the Governors of the Postal Service had approved its recommended decision in Docket No. C85–1, the Postal Rate Commission (Commission) published, as a final rule, changes in the Domestic Mail Classification Schedule (DMCS) concerning the eligibility requirements for entry into second-class mail. 51 FR 8827. The Postal Service proposes to incorporate these changes into the Domestic Mail Manual (DMM). Mailers who seek second-class eligibility for multiple "issues" of a single publication that regularly appear on the same day will be required to file additional information pertaining to the number and percentage of copies of each "issue" that are distributed to nonsubscribers. This change in procedures is needed in order to verify that the additional conditions of eligibility applicable to multiple same-day "issues" of a publication are satisfied.

DATE: Comments must be received on or before May 2, 1986.

ADDRESS: Written comments should be directed to the Director, Office of Mail Classification, Rates and Classification Department, U.S. Postal Service, Washington, DC 20260–5361. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 8430, U.S. Postal Service Headquarters, 475 L'Enfant Plaza W., SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Beller, (202) 268–5166.

SUPPLEMENTARY INFORMATION:

I. Background

Advo-System, Inc. filed a complaint with the Commission on December 27, 1984, requesting that it investigate the rates charged by the Postal Service for mailings by daily newspapers of weekly "Plus" or "total market coverage" publications to nonsubscribers at regular and subsidized rates under the second-class permit of the daily newspaper.

In the record developed by the parties which participated in the proceedings leading to the Commission's Recommended Decision, "Plus" publications are described as typically having the following characteristics: (1) Published once a week by daily newspapers; (2) distributed during the middle of the week to most or all households within a selected market area; (3) provided free of charge by mail delivery to nonsubscribers of a daily newspaper; (4) formatted to resemble issues of a daily newspaper; (5) consisting principally of advertising material and usually including advertising inserts; and (6) generally containing relatively little editorial content. PRC Opinion at 3.

The Commission contrasted the design and purpose of regular daily newspaper issues, which "are marketed to the public for their editorial and news content" and which "serve both the public subscribers and advertisers," with the design and purpose of "Plus" publications, which "are not designed to, and do not generate, independent public demand." Id. at 29. In light of these and other differences between the way "Plus" publications and regular issues are marketed and distributed, the Commission determined that there was a need for amendments to the DMCS reflecting its determination that "Plus" publications are separate publications. The new requirements are intended to protect the integrity of second-class mail which historically, as a class, has benefited from more favored rate treatment and better service standards than those for third- or fourth-class mail.

II. Recommended Change

The new regulation, which will be incorporated into the DMM as § 425.225, provides that, for purposes of determining second-class eligibility and postage, an "issue" of a newspaper or other periodical shall be deemed to be a separate publication if it is published at a regular frequency on the same day as another regular "issue" of the same publication, and it is distributed to more than (i) 10 percent nonsubscribers, and (ii) twice as many nonsubscribers as the other issue on that same day. Although the language recommended by the Commission in § 200.0123b of the DMCS says "(i) . . . or (ii) . . ., whichever is greater", in reality, an "issue" that exceeds the greater of the two will exceed both. The DMM will use the more straightforward language in order to make it easier to understand the regulation.

This means that if a periodical that is regularly published every weekday decides to publish an additional "issue" every Wednesday, the new Wednesday "issue" may be considered a separate publication, depending on the extent to which it is distributed to nonsubscribers. If the number of copies of the new Wednesday "issue" distributed to people who do not subscribe to the parent periodical exceeds 10 percent of the total number of distributed copies of the new Wednesday "issue," and is more than twice the number of copies of the parent periodical distributed to nonsubscribers, the new Wednesday "issue" will not be considered to be an "issue" of the parent publication. It will, therefore, either have to qualify on its own for second-class entry or be entered as third- or fourth-class mail.

In order to determine whether multiple same-day "issues" of a publication are eligible for second-class entry under the permit granted to the parent publication, the Postal Service needs to have more information about the distribution of copies of each of the "issues" to nonsubscribers than is currently required by the mailing statement. The Postal Service also needs more information than is required by Form 3510 in order to decide whether a request for a change in the regular frequency of issuance of a publication to incorporate multiple same-day "issues" should be granted. When a mailer distributes copies of a second-class publication at postage rates other than second-class rates, or by means outside the mailstream such as newspaper carriers, newsstands, news agents, etc., the Postal Service has no way of determining, at the time of mailing, either the total number of copies distributed or the number of copies which are distributed to nonsubscribers. By completing a statement for submission with Form 3510 and with each mailing of regularly published same-day "issues", the mailer and the Postal Service will be able to immediately ascertain whether either "issue" is a separate publication under the provisions of § 200.0123 DMCS. A copy of the proposed form, identified as PS Form 3541–CX in Exhibit 484a, follows.

The proposed form would require the mailer to submit the following information for each "issue" of a second-class publication that is regularly published on the same day as another "issue" of the same publication:

1. Total number of copies of each "issue" distributed by all means;
2. Total number of copies of each "issue" distributed to nonsubscribers;
3. Percent of copies of each "issue" distributed to nonsubscribers.

Using the figures furnished by the publisher, the Postal Service will simply compare the extent to which each "issue" is distributed to nonsubscribers and make the determination of whether either "issue" is a separate publication, for postal purposes. Section 444.1 DMM is being amended and a new section 484 is being added to advise mailers and postal employees when the new PS Form 3541–CX must be submitted.

Sections 422.221, 422.6 and 425.2 DMM are being amended to carry forth the intent of the Commission and the Governors that publications described in the record as "Plus" publications be

considered separate publications, whether they are called "issues" or "editions", based on the new criteria.

Although exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. of 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed amendment of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. *See* 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111.—[AMENDED]

1. The authority citation of 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 404, 407, 408, 3001–3011, 3201–3219, 3403–3405, 3621, 5001; 42 U.S.C. 1973cc–13, 1973cc–14.

PART 4—SECOND-CLASS MAIL

422.2 General Publications.

2. Revise 422.221 to read as follows:

.22 Circulation Requirements.

.221 *List of Subscribers.* General publications must have a legitimate list of subscribers who have paid or promised to pay, at a rate above a nominal rate, for copies to be received during a stated time. Records for subscriptions to a publication which are obtained in conjunction with subscriptions to other publications must be maintained in such a manner that individual subscriptions to each publication, by title, can be substantiated and verified. Persons whose subscriptions are obtained at a nominal rate (see 422.222) shall not be included as a part of the legitimate list of subscribers. Commingled copies sent in fulfillment of subscriptions obtained at a nominal rate must be charged with postage at regular rates (see 411.21 and 411.4).

422.6 Requester Publications.

3. Revise 422.6d to read as follows:

d. Effective October 1, 1982, the publication must have a legitimate list of persons who request the publication, and 50 percent or more of the copies of the publication must be distributed to persons making such requests. Subscription copies of the publication which are paid for or promised to be paid for, including those at or below a nominal rate, may be included in the determination of whether the 50 percent request requirement is met. Persons will not be deemed to have requested the publication if their request is induced by a premium offer or by receipt of material consideration. Records of requests for a publication which are obtained in conjunction with subscriptions or requests for other publications must be maintained in such a manner that individual requests for the publication, by title, can be substantiated and verified. Requests which are more than three years old will not be considered to meet this requirements.

4. Revise 425.2 to read as follows:

425.2 Issues and Editions.

.21 General. Issues and editions must exhibit the continuity required by section 421.1.

.22 Issues.

.221 Issues must be published in accordance with the publication's stated frequency (see 421.22).

.222 The publication of regular issues of general and requester publications must be reflected in the identification statement (455.2) and subscription price. In the case of requester publications, copies must be distributed to requesters in accordance with 422.6d.

.223 Extra issues, not reflected in the publication's stated frequency, may occasionally be published for the purpose of communicating information received too late for insertion in the regular issue. Such issues may not be intended for advertising purposes. The original entry post office must be notified in writing of such issues before they are mailed.

.224 Issues may contain annual reports, directories, lists, and similar texts as a part of the contents. Such copies shall not bear designations indicating they are separate publications such as annuals, directories, catalogs, yearbooks, or other types of separate publications. Such issues must bear the publication name as required by 455.1 and be included in the regular annual subscription price.

.225 An "issue" of a newspaper or other periodical shall be deemed to be a separate publication, for postal purposes, and must independently meet the applicable second-class eligibility qualifications in 421.2 through 421.4 and 422, when the following conditions are met:

a. It is published at a regular frequency, such as once each week, on the same day as another regular "issue" of the same publication, and

b. More than 10% of the total number of its copies are distributed to nonsubscribers to the other regular issue published on that day, AND the number of copies distributed to nonsubscribers is more than twice the number of copies of the other regular "issue" published on the same day which are distributed to nonsubscribers.

.23 Editions.

.231 Individual issues may be published in editions such as demographic, morning or evening editions. Subscribers and requesters will routinely receive no more than one edition of any issue.

.232 Extra editions may be published for the purpose of communicating additional news and information received too late for insertion in the regular edition. Such editions may not be intended for advertising purposes.

.233 Editions may differ in content, but not to the extent that they constitute separate and independent publications. Separate publications will not be accepted as editions.

5. Revise 444.1 to read as follows:

444.1 Change in Title, Frequency, or Office of Publication.

An application for reentry must be filed on Form 3510, Application for Additional Entry or Reentry of Second-Class Publication, whenever the name, frequency of issuance, location of the known office of publication, or qualification category (see 422) is changed. When the name or frequency of issuance of a publication is changed, a Form 3510 must be filed at the post office of original entry with two copies of the publication showing the new name or frequency. When the frequency is being changed to include more than one regular issue on any day, PS Form 3541–CX must be completed by the publisher and submitted with Form 3510. . . .

6. Add new section 484 as follows:

484 Statement of Publication of More Than One Issue on the Same Day.

The publisher must submit PS Form 3541–CX whenever the publisher desires to mail an "issue" that is regularly published on the same day as another "issue" of the same publication under a single second-class permit granted to the parent publication. This form is necessary to determine whether either "issue" will be treated as a separate publication for purposes of determining eligibility to mail at the second-class rates (see 425.225). The publisher must attach the completed forms to the mailing statement(s) submitted to each office where mailings are made. A sample of PS Form 3541–CX is shown in Exhibit 484a.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

BILLING CODE 7710–12–M

-12-

SECOND-CLASS CERTIFICATION FOR MULTIPLE ISSUES ON THE SAME DAY

INSTRUCTIONS

•Complete this form and attach it to **Form 3510**, Application for Additional Entry or Reentry of Second-Class Publication, when the frequency of a second-class publication is being changed to include more than one "issue" on any day (see 444.1, Domestic Mail Manual).

•This form must also be submitted to each office of mailing with all Forms 3541 and 3541-A for each "issue" of a second-class publication that is regularly published on the same day as another "issue" of the same publication.

The figures reported must be for the "issues" published on the same day and must include all copies of all editions of the "issues" identified as Issues #1 and #2 which are circulated through the mails and by all other methods of distribution.

PART A - TO BE COMPLETED BY PUBLISHER/AGENT

TITLE OF PUBLICATION:_____ USPS#_____

Date of issue:_____

ISSUE #1:

Vol./Issue No._____

1a. Total number of copies of issue distributed by all means: (1a) _____

1b. Total number of copies of issue distributed to NONSUBSCRIBERS: (1b) _____

1c. Percent of copies distributed to nonsubscribers (decimal format):
(1b) divided by (1a) = (1c) .____

1d. Convert (1c) to percent format: (1c) x 100 = (1d) _____%
(i.e.: .17 x 100 = 17%)

ISSUE #2:

Vol./Issue No._____

2a. Total number of copies of issue distributed by all means: (2a) _____

2b. Total number of copies of issue distributed to NONSUBSCRIBERS: (2b) _____

2c. Percent of copies distributed to nonsubscribers (decimal format):
(2b) divided by (2a) = (2c) .____

2d. Convert (2c) to percent format: (2c) x 100 = (2d) _____%
(i.e.: .17 x 100 = 17%)

I certify that the information furnished on this form is correct.

(Signature of Publisher/Agent Required)

PART B - TO BE COMPLETED BY ENTRY POST OFFICE

Post Office and State of Mailing:_____

COPY the figures for (1b), (1d), (2b) & (2d) furnished by the publisher in PART A in the corresponding spaces below. You must calculate (1e) and (2e) below using the publisher's figures.

(1b)_____ x 2 = _____(1e) (2b)_____ x 2 = _____(2e)

For purposes of determining eligibility to mail at second-class rates (see 425.225):

ISSUE #1 will be treated as a SEPARATE PUBLICATION if (1b) is greater than (2e) & (1d) is greater than 10%.

(1b)_____ (2e)_____ (1d)_____

Based on the data on this form, ISSUE #1 is a separate publication: [] yes []no

ISSUE #2 will be treated as a SEPARATE PUBLICATION if (2b) is greater than (1e) & (2d) is greater than 10%.

(2b)_____ (1e)_____ (2d)_____%

Based on the data on this form, ISSUE #2 is a separate publication: [] yes []no

If the data on this form indicate that either "issue" is a separate publication, that "issue" may not be mailed at the second-class rates under the authorization granted to the publication named in PART A. It must instead independently meet the applicable second-class eligibility qualifications in 421.2 through 421.4 and 422, Domestic Mail Manual (See 425.225), or be mailed at third- or fourth-class rates.

PS FORM 3541-CX

Exhibit 484-a

[FR Doc. 86-7261 Filed 4-1-86; 8:45 am]

BILLING CODE 7710-12-C

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket 86-1; FCC 86-116]

Common Carrier Services; WATS-Related and Other Amendments of the Access Charge Rules

AGENCY: Federal Communications Commission.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Federal Communications Commission proposes to eliminate the existing surcharge exemption from the access charge rules for carriers that "resell private line serivce to offer services which are not MTS/WATS-type services." The Commission believes that these carriers, like other interexchange carriers and resellers, should pay the cost of access to the local exchange network.

DATES: Comments by May 1, 1986; replies by May 29, 1986.

ADDRESS: Federal Communications Commission, Washington, DC, 20554.

FOR FURTHER INFORMATION CONTACT: Sandra Eskin, Policy and Program Planning Division, Common Carrier Bureau, (202) 632-9342.

SUPPLEMENTARY INFORMATION: : This is a summary of the Commission's supplemental notice of proposed rulemaking, CC Docket 86-1, adopted March 13, 1986, and released March 25, 1986. The first notice of proposed rulemaking was published January 7, 1986 (51 FR 633).

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC, 20037.

Summary of Supplemental Notice of Proposed Rulemaking

By this Supplemental Notice of Proposed Rulemaking, the FCC seeks further comment on whether it should eliminate the existing exemption from the access charge rules for carriers that "resell private line service to offer services which are not MTS/WATS-type services." This exemption has allowed certain carriers to receive dial-up access to their networks at local business line rates. The justification given in the original access charge proceeding for not assessing these carriers access charges was a concern with "rate shock", but the FCC determined that it believes this concern no longer provides an adequate basis for exempting them from these charges, just as it no longer justifies allowing resellers to pay the business line rate for access to the local exchange. The FCC proposes to make this change effective January 1, 1987.

All interested persons may file comments on the issues and proposals discussed in the Supplemental Notice not later than May 1, 1986 and that replies may be file not later than May 29, 1986. In accordance with the provisions of § 1.419 of the Commission's Rules, 47 CFR 1.419, an original and five copies of all statements, briefs, comments, or replies shall be filed with the Federal Communications Commission, Washington, DC, 20554, and all such filings will be available for public inspection in the Docket Reference Room at the Commission's Washington, DC office. In reaching its decision, the Commission may consider information and ideas not contained in filings, provided that such information is reduced to writing and placed in the public file, and provided that the fact of the Commission's reliance on any such information or ideas is noted in the Order.

This is a non-restricted notice and comment rulemaking proceeding. *See* § 1.1231 of the Commission's rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

The FCC determined that a Regulatory Flexibility Analysis is not necessary in this proceeding. This docket is a sequel to the major access charge rulemaking proceeding in CC Docket 78-72, in which the FCC determined that the Regulatory Flexibility Act did not apply in that local exchange carriers, the parties directly subject to our rules, do not fall within the Act's definition of a "small entity."

The proposal contained in this Supplemental Notice of Proposed Rulemaking has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

Ordering Clauses

Accordingly, It is ordered that, pursuant to 47 U.S.C. 154(i), 154(j), 201-05, 218, and 403, and 5 U.S.C. 553, notice is hereby given of the proposed adoption of new or modified rules, in accordance with the discussion and delineation of issues in the Supplemental Notice of Proposed Rulemaking and on the basis of previous notices and filings in this proceeding.

List of Subjects in 47 CFR Part 69

Communications common carriers; Access charges.

William J. Tricarico,

Secretary.

Part 69 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 69—ACCESS CHARGES

1. The authority citation for Part 69 continues to read as follows:

Authority: Secs. 4(j), 201, 202, 203, 205, 218, 403, and 410 of the Communications Act as amended; 47 U.S.C. 154(i), 154(j), 201, 202, 203, 205, 218, 403, and 410.

2. Section 69.5 is amended by revising paragraph (b) to read as follows:

§ 69.5 Persons to be assessed.

* * * * *

(b) Carrier's carrier charges shall be computed and assessed upon all interchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services.

* * * * *

[FR Doc. 86-7156 Filed 4-1-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Revised Listing for Cactaceae (Cacti) in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of proposed amendments to appendix; request for comments.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates trade in certain animal and plant species. Appendices I, II, and III of CITES list those species for which trade is controlled. Any nation that is a Party to CITES may propose amendments to Appendices I and II for consideration by the other Parties. The Kingdom of the Netherlands has proposed that the annotation "All species of the family in the Americas"

be deleted from Cactaceae in Appendix II, and that the separate lisiting of *Rhipsalis* species be deleted from Appendix II. The intent of the amendments is to require regulation of international trade in artifically propagated and naturalized cacti originating from outside the Americas, since some Parties and the CITES Secretariat have interpreted the above annotation to exclude those cacti. (Native cacti worldwide would be unaffected by the proposal, and remain regulated.) Adoption of the proposal would have little effect in the United States, which since September 15, 1980 (45 FR 56923) has been regulating all cacti in Appendix II regardless of their origin (artifically propagated, naturalized, or native in or outside the Americas). This proposal is being considered under the postal procedures provided by CITES. The U.S. Fish and Wildlife Service (Service) requests information and comments on the proposal in order to transmit relevant information to the Secretariat on April 19, 1986. The Service will have until about June 13, 1986, to register an objection, if any, to the proposed amendments, which thereby would necessitate a vote on them.

DATES: Relevant information received by April 17, 1986, will be considered in formulating a reply to the CITES Secretariat. All information and comments received by May 2, 1986, will be considered in developing the final United States position on the proposed amendments.

ADDRESSES: Please send correspondence concerning this notice to the Office of Scientific Authority, Mail stop: Room 527, Matomic Building, U.S. Fish and Wildlife Service, Washington, DC 20240. The full text of the proposed amendments and notification from the CITES Secretariat, as well as materials received, will be available for public inspection from 8:00 a.m. to 4:00 p.m. Monday through Friday in Room 537, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane at the address given above, or telephone (202) 653–5948.

SUPPLEMENTARY INFORMATION:

Background

Postal procedures for amending the lists of animal and plant species included in Appendices I and II of CITES are provided in Article XV of CITES. Under this article, any Party may propose an amendment for consideration between the meetings of the Conference of the Parties. In response, any Party may transmit comments, information, and data to the CITES Secretariat within 60 days of the date when the Secretariat communicated its recommendations on such a proposal to the Parties. As soon as possible thereafter, the Secretariat will then communicate the replies received together with its own recommendations to the Parties. If the Secretariat receives no objection within 30 days of communicating these replies and recommendations, the proposal is adopted and enters into effect 90 days later. If any Party objects during the 30-day period, the proposal is submitted to a postal vote. The proposal then could be adopted by a two-thirds majority of those Parties casting an affirmative or negative vote, provided that at least one-half of all Parties cast a vote or indicate their abstention within 60 days.

The Kingdom of the Netherlands has submitted a proposal, for consideration under the postal procedures, to revise the listing of Cactaceae (cacti) in Appendix II. The Secretariat sent the proposal together with its own recommendation to the Parties on February 26, 1986. This material was received by the Office of Scientific Authority on March 19, 1986. The closing date for receipt of information and comments by the Secretariat is April 27, 1986.

Information in the Proposal

The Kingdom of the Netherlands provided information, as summarized below, in support of its proposal. The family Cactaceae was listed in Appendix II of CITES in 1973 with the annotation "All species of the family in the Americas." The cactus genus *Rhipsalis* was separately listed in Appendix II at that time (this is the only genus of cacti with species that may be native outside the Americas).

Several interpretations have arisen on the meaning of the annotation and the purpose in listing *Rhipsalis* separately. In a notice in the August 26, 1980, **Federal Register** (45 FR 56923), the United States announced its determination that the annotation means all species of the family that are native to the Americas, regardless of the current physical location of the specimens. The notice indicated that with the apparent exception of certain species of *Rhipsalis*, all species of Cactaceae are native to the Americas, and that some introduced cacti have become established in the wild (i.e., naturalized) elsewhere. The United States began on September 15, 1980, to regulate import of specimens of artificially propagated and naturalized Appendix II cacti from outside the Americas as a consequence of the above determination. Acceptance of the Netherlands proposal, therefore, would not change current U.S. regulatory practice. (Adoption of the proposed amendments would, however, require some other Parties to CITES to broaden the scope of their regulation of cacti.)

A second interpretation of the annotation and separate listing of *Rhipsalis* has been made by some Parties and the CITES Secretariat. They adopted the view that only Appendix II cacti taken from the wild and artificially propagated in the Americas are to be regulated (as well as *Rhipsalis* worldwide), and therefore, that the artificially propagated and naturalized cacti from outside the Americas are not to be regulated. The proposal stated that a third narrow interpretation could be that Appendix II cactus species that have naturalized populations outside the Americas are totally exempt from CITES (except *Rhipsalis* species). To our knowledge, none of the Parties have adopted this third interpretation.

In March 1985, the Secretariat asked the chairman of the CITES Plant Working Group to resolve this problem so that uniform regulation could occur. The proposal states that inquiries to the botanists present at the Plenipotentiary Conference of CITES in February-March 1973 Washington, DC, resulted in the discovery that historical intent apparently was to exclude naturalized populations of cacti not in the Americas. Because there was uncertainty whether some species of *Rhipsalis* are native in the Old World, the genus was listed separately to ensure that all native species would be regulated. (Artificially propagated cacti worldwide thus would be regulated if this fourth interpretation was adopted.)

At the Fifth Meeting of the Conference of the Parties to CITES in April–May 1985 in Buenos Aires, Argentina, the issue was discussed by the Plant Working Group, which agreed that it would be a step backwards to accept historical intent (which may not actually be what was done by the listing and annotation despite the intent). The Plant Working Group strongly supported the present interpretation of the United States that all Appendix II cacti, regardless of their origin, are to be regulated. The United Kingdom of Great Britain and Northern Ireland also regulates cacti in this manner, and believes some other Parties do also. The Conference of the Parties in Buenos Aires agreed in principle to the recommendation of the Plant Working Group that trade in all Appendix II cacti, regardless of origin, be regulated. At

that time the Secretariat stated that a proposal was needed to revise the listing, and the Netherlands agreed to prepare it.

The Netherlands proposal is clearly in the interest of plant conservation, as its adoption would provide greater protection to native cacti. For those Parties not regulating all Appendix II cacti, its adoption would close gaps. For example, regulation of artificially propagated cacti not originating in the Americas would assist some European Parties in determining whether wild cacti are being traded under false claims that they are artificially propagated. As another example, in some Old World areas where naturalized cacti occur (e.g. South Africa), there would no longer be the possibility that other CITES-listed succulents that may resemble cacti to port inspectors (e.g. *Euphorbia* and *Pachypodium* species) could be falsely traded as naturalized cacti without any CITES document.

If the Netherlands proposal is accepted by the Parties, the annotation "All species of the family in the Americas' would be deleted from the listing of the family Cactaceae in Appendix II of CITES, and the separate listing of *Rhipsalis* species would be deleted. The effect would be that all species of cacti not in Appendix I would remain listed in Appendix II (where all species of *Rhipsalis* would be included in the family listing), and specimens in international trade originating from outside as well as within the Americas would be regulated. This would bring the listing of Cactaceae into conformity with other higher taxon listings of plants, such as Orchidaceae and Zamiaceae. Adoption of the proposal would not alter the recent exemption of certain parts and derivatives of certain Cactaceae (see the November 22, 1985, **Federal Register**, 50 FR 48212).

Comments of the CITES Secretariat

In transmitting the proposal, the Secretariat commented that it was submitted as a result of the discussion held at the Fifth Meeting of the Conference of the Parties in Buenos Aires, and that the principle of the proposed amendments was supported without objection by the Conference of the Parties. The Secretariat stated that it fully supports the proposal and strongly recommends adoption of the proposed amendments.

Comments Sought

The Service requests any information or comments that might be useful in developing a response to the Secretariat, and in developing the final United States position. Please transmit such information and comments to the Service on or before the dates given above. The tentative position of the United States is to fully support the proposed amendments, which endorse current U.S. regulatory practice. The final United States decision as to whether to support or oppose the proposal or abstain from voting is to be based on the best available biological and trade information, including information or comments received in response to this notice, and any further comments transmitted to us by the Secretariat.

This notice was prepared by Dr. Bruce MacBryde, Botanist, Office of Scientific Authority, under authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

List of Subjects in 50 CFR Part 23

Endangered and threatened plants, Endangered and threatened wildlife, Exports, Fish, Imports, Marine mammals, Plants (agriculture), Treaties.

Dated March 28, 1986.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-7264 Filed 4-1-86; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 51, No. 63
Wednesday, April 2, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

March 28, 1986.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information.

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of respones; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202–447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

•Agricultural Marketing Service
7 CFR Part 70, Regulations for Voluntary Grading of Poultry Products and Rabbit Products and U.S. Classes, Standards, and Grades
PY–32, PY–33, and PY–234
On occasion; Monthly
Businesses or other for-profit; Small businesses or organizations; 18,403 responses; 3,855 hours; not applicable under 3504(h)
Merlin L. Nichols, Jr. (202) 447–3506
•Agricultural Marketing Service
Wheat and Wheat Foods Research and Nutrition Education
Quarterly; Annually
Businesses or other for-profit; Small businesses or organizations; 2,125 responses; 238 hours; not applicable under 3504(h)
Lowry Mann (202) 447–2650
• Agricultural Marketing Service
Reporting Requirements Under Regulations Governing the Inspection and
Grading Services of Manufactured or Processed Dairy Products
DA 125, –132, –155, and –168
On occasion
Businesses or other for-profit; 15,226 responses; 1,357 hours; not applicable under 3504(h)
Lynn G. Boerger (202) 382–9381

New

• Farmers Home Administration
Nominating Petition
FmHA 2054–5
On occasion
Individuals or households; Farms; 3,000 responses; 1,500 hours; not applicable under 3504(h)
Robert Miller (202) 382–1061

Revision

• Agricultural Stabilization and Conservation Service
Contract to Participate in Production Adjustment Programs
CCC–477 and CCC 477A
Annually
Farms; 1,670,000 responses; 334,000 hours; not applicable under 3504(h)
Bill Harshaw (202) 382–9878
• Animal and Plant Health Inspection Service
Importation of Animal and Poultry, Animal/Poultry Products, Certain Animal Embryos, and Zoological Animals
VA 17–8, 17–11, 17–12, 17–20, 17–23, 17–29, 17–32, 17–65A, 17–65B, 17–65C, 17–129, 17–130, 17–135A
Recordkeeping; On occasion; Annually
Businesses or other for-profit; 18,638 responses; 4,562 hours; not aplicable under 3504(h)
Dr. William Parham (301) 436–8530

Jane A. Benoit,
Departmental Clearance Officer.

[FR Doc. 86–7277 Filed 4–1–86; 8:45 am]
BILLING CODE 3410–01–M

Forest Service

Inyo National Forest; Mono Basin National Forest Scenic Area Advisory Board; Meeting

The Mono Basin National Forest Scenic Area Advisory Board will meet at 9:30 a.m. on April 30 1986, at the Lee Vining Presbyterian Church, Lee Vining, California. The agenda of the meeting will be: Working on the alternatives and consequences for the Comprehensive Management Plan.

The meeting will be open to the public. Persons who wish to attend and make oral presentation should notify Leon R. Silberberger, Acting Forest Supervisor, Inyo National Forest, 873 N. Main Street, Bishop, California, 93514, Telephone: (619) 873–5841. Written statements may be filed with the Committee before or after the meeting.

The Committee has established the following rules for public participation: After the Board has completed discussion of each topic, the public will be allowed time for questions or comment.

Dated: March 24, 1986.

Leon R. Silberberger,
Acting Forest Supervisor and Interim Chairman.

[FR Doc. 86–7218 Filed 4–1–86; 8:45 am]
BILLING CODE 3410–11–M

Soil Conservation Service

Environmental Statements; Mill Creek Watershed, MT

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Mill Creek Watershed, Park County, Montana.

FOR FURTHER INFORMATION CONTACT: Glen H. Loomis, State Conservationist, Soil Conservation Service, 10 East Babcock, Bozeman, Montana, 59715, telephone (406) 587–6813.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Glen H. Loomis, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for agricultural water management-irrigation. The planned works of improvement include one new diversion structure, 4.2 miles of canal, 11.6 miles of pressurized delivery pipelines, a wasteway structure, new sprinkler systems on 2,160 acres of land presently flood irrigated, and 840 acres of sprinkler system upgrading.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Wallace A. Jolly.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmantal consultation with state and local officials.)

Dated: March 21, 1986.

Glen H. Loomis,

State Conservationist.

[FR Doc. 86–7220 Filed 4–1–86; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Opportunity To Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with section 353.53a or 355.10 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than April 30, 1986, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in April, for the following periods:

	Period
ANTIDUMPING DUTY PROCEEDING	
Diamond tips from United Kingdom	04/01/85–03/31/86
Spun acrylic yarn from Italy	04/01/85–03/31/86
Spun acrylic yarn from Japan	04/01/85–03/31/86
Sugar and syrups from Canada	04/01/85–03/31/86
Sorbitol from France	04/01/85–03/31/86
Roller chain other than bicycle from Japan	04/01/85–03/31/86
Bicycle tires and tubes from South Korea	04/01/85–03/31/86
Calcium hypochlorite from Japan	10/09/84–03/31/86
Steel reinforcing bars from Canada	04/01/85–03/31/86
Cyanuric acid from Japan	04/01/85–03/31/86
Dichloroisocyanurates from Japan	04/01/85–03/31/86
Trichloroisocyanuric acid from Japan	04/01/85–03/31/86
Color television receivers from South Korea	04/01/85–03/31/86
Color television receivers, except for video monitors, from Taiwan	04/01/85–03/31/86
COUNTERVAILING DUTY PROCEEDING	
Cold rolled steel sheet from Argentina	01/01/85–12/31/85
Wool from Argentina	01/01/85–12/31/85
Pig iron from Brazil	01/01/85–12/31/85
Leather wearing apparel from Colombia	01/01/85–12/31/85
Leather wearing apparel from Mexico	01/01/85–12/31/85

A request must conform to the Department's interim final rule published in the **Federal Register** (50 FR 32556) on August 13, 1985. Seven copies of the request should be submitted to the Deputy Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by April 30, 1986.

If the Department does not receive by April 30, 1986, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: March 26, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86–7280 Filed 4–1–86; 8:45 am]

BILLING CODE 3510–DS–M

Articles of Quota Cheese; Quarterly Determination and Listing of Foreign Government Subsidies

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Publication of Quarterly Update of Foreign Government Subsidies on Articles of Quota Cheese.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared a quarterly update to its annual list of foreign government subsidies on articles of quota cheese. We are publishing the current listing if those subsidies that we have determined exist.

EFFECTIVE DATE: April 1, 1986.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202 377–2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 ("the TAA") requires the Department of Commerce ("the

Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Department of Agriculture, information on subsidies (as defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foreign governments on articles of quota cheese.

In the current quarter the Department has determined that the subsidy amounts have changed for each of the countries for which subsidies were identified in our January 1, 1986, annual subsidy list. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amount of each subsidy on which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Deputy Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the TAA (19 U.S.C. 1202 note).

Dated: March 26, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

APPENDIX.—QUOTA CHEESE SUBSIDY PROGRAMS

Country and program(s)	Cents per pound	
	Gross [1] subsidy	Net [2] subsidy
Belgium: European Community (EC) restitution payments	0.9	0.9
Canada: Export assistance on certain types of cheese	24.9	24.9
Denmark: EC Restitution payments	0.4	0.4
Finland:		
Export subsidy	59.9	59.9
Indirect subsidies	15.5	15.5
	75.4	75.4
France: EC restitution payments	.0	.0
Ireland: EC restitution payments	1.4	1.4
Italy: EC restitution payments	20.6	20.6
Luxembourg: EC restitution payments	0.9	0.9
Netherlands: EC restitution payments	.0	.0
Norway:		
Indirect (milk) subsidy	16.1	16.1

APPENDIX.—QUOTA CHEESE SUBSIDY PROGRAMS—Continued

Country and program(s)	Cents per pound	
	Gross [1] subsidy	Net [2] subsidy
Consumer subsidy	35.8	35.8
	51.9	51.9
Switzerland: Deficiency payments	71.2	71.2
United Kingdom: EC restitution payments	.0	.0
West Germany: EC restitution payments	.0	.0

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 86-7258 Filed 4-1-86; 8:45 am]

BILLING CODE 3510-DS-M

Short Supply Reviews on Certain Cold Rolled Strip and Cold Rolled Flat Wire; Request for Comments

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of requests for short supply determinations under Article 8 of the U.S.-EC Arrangement on Certain Steel Products with respect to certain bonderized cold rolled strip for use in manufacturing roller bearings, and certain cold rolled flat wire for use in manufacturing computer keybroad springs.

EFFECTIVE DATE: Comments must be submitted no later than ten days from publication of this notice.

ADDRESS: Send all comments to Nicholas C. Tolerico, Acting Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave. NW., Washington, DC 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Nicholas C. Tolerico, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC 20230, Room 3099, (202) 377-3793.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement on Certain Steel Products provides that if the U.S." * * * determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product . . . ."

We have received short supply requests for the following products:

1. *Bonderized Cold Rolled Strip*—Two grades (MRST 443 and C15M) of special bonderized (one side only) cold rolled steel strip for use in deep drawing roller bearing shells or housings. Steel strip to specification MRST 443 ranges from 22 mm to 202 mm in width and 0.5 mm to 1.2 mm in thickness, and conforms to DIN specification 1624. Steel strip to specification C15M ranges from 40.5 mm to 179.0 mm in width and 0.77 mm to 1.20 mm in thickness, and conforms to DIN specification 1544.

2. *Computer Keyboard Spring Steel*—Certain high carbon (0.95 percent carbon and 0.12 through 0.20 percent chromium) cold rolled flat wire, hardened and tempered, 0.140 inch in width and 0.002 inch in thickness, meeting Swedish T-4 thickness tolerance and B-1 width tolerance, with round, ground and polished edges, and with bright, polished finish. It will be used to manufacture computer keybroad springs.

Any party interested in commenting on these requests should send written comments as soon as possible, and no later than ten days from publication of this notice. Comments should focus on the economic factors involved in granting or denying these requests.

Commerce will maintain these requests and all comments in public files. Anyone submitting business proprietary information should clearly indentify that portion of their submission and provide a non-proprietary submission which can be placed in the public files. The public files will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099 at the above address.

March 27, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-7259 Filed 4-1-86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit; Ms. Susan Kruse and Dr. William T. Doyle (P374)

On January 29, 1986, notice was published in the **Federal Register** (51 FR 3642) that an application had been filed by Ms. Susan Kruse and Dr. William T. Doyle, Institute of Marine Sciences, Long Marine Laboratory, University of California, Santa Cruz, California 95064

for a Permit to take an unspecified number of Risso's dolphins (*Grampus griseus*) by incidental harassment for the purposes of scientific research.

Notice is hereby given that on March 18, 1986 as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices: Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, DC; and Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: March 19, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–7205 Filed 4–1–86; 8:45 am]

BILLING CODE 3510-22-M

Permits; Marine Mammals

On February 13, 1986, Notice was published in the **Federal Register** (51 FR 5391) that FEDERPESCA, Rome, Italy has applied for a Category 1: Towed or Dragged Gear General permit to take up to 20 small cetaceans and 20 harbor seals in the North Atlantic Ocean under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407).

The applicant requests a modification to the application to take an additional 40 small cetaceans during the 1986 fishing season within the U.S. Fishery Conservation Zone.

The application and modification request are available for review in the following office: Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, DC.

Interested parties may submit written comments within 30 days of the date of this notice to the Assistant Administrator for Fisheries, Washington, DC 20235.

Dated: March 26, 1986.

Richard B. Roe,

Director, Office of Fisheries Managment, National Marine Fisheries Service.

[FR Doc. 86–7206 Filed 4–1–86; 8:45 am]

BILLING CODE 3310-22-M

Marine Mammals; Application for Permit; Mr. A. Rus Hoelzel (P377)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name Mr. A. Rus Hoelzel.

b. Address P.O. Box 563, Friday Harbor, Washington.

2. Type of Permit:

Scientific Research.

3. Name and Number of Marine Mammals:

Killer whales (*Orcinus orca*), 86.

4. Type of Take:

The animals will be taken by harassment, and a skin biopsy sample will be taken from 45 of these animals.

5. Location of Activity:

Puget Sound, Washington.

6. Period of Activity:

Five years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, DC; and

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115.

Dated: March 26, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–7207 Filed 4–1–86; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent to Grant Exclusive Patent License; Reed Mining Tools, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Reed Mining Tools, Inc., having a place of business at 1600 S. Great Southwest Parkway, Grand Prairie, Texas, an exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "Unitary Drill Bit and Roof Bolt," U.S. Patent 4,055,051. The patent rights in this invention have been assigned to the United States of America, as represented by The Secretary of the Interior.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 86–7222 Filed 4–1–86; 8:45 am]

BILLING CODE 3510-DS-M

Intent to Grant Exclusive Patent License; Cummings & Lusk

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Cummings & Lusk, a partnership operating under the laws of the state of West Virginia and having a place of business in Whitesville, West Virginia, an exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "Short Range Trapped Miner Locator," U.S. Patent 4,491,971. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of the Interior.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 20 and 37 CFR 404.7. The proposed license may be granted unless, within sixty

days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to Douglas J. Campion, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 86-7223 Filed 4-1-86; 8:45 am]

BILLING CODE 3510-DS-M

Intent to Grant Exclusive Patent License; Heinrichs Geoexploration Co.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Heinrichs Geoexploration Company, having a place of business in Tucson, Arizona, an exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "Mine Roof Competency Test", MIN #3294. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of the Interior.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within six days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to Douglas J. Campion, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 86-7224 Filed 4-1-86; 8:45 am]

BILLING CODE 3510-DS-M

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Information Collection.

SUMMARY: The Commodity Futures Trading Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

ADDRESS: Persons wishing to comment on this information collection should contact Katie Lewin, Office of Management and Budget, Room 3235, NEOB, Washington, DC 20503, (202) 395-7231. Copies of the submission are available from Joseph G. Salazar, Agency Clearance Officer, (202) 254-9735.

Title: Gross Margining of Omnibus Accounts.

Abstract: A carrying futures commission merchant is required to maintain a written representation from the originating FCM if it allows a person trading through an omnibus account to margin positions in the account at a lower than normal level because a spread or hedge position is involved.

Control number: 3038-0026.

Action: Extension.

Respondents: Businesses (excluding small businesses).

Estimated annual burden: 500 hours.

Estimated number of respondents: 400.

Issued in Washington, DC, on March 27, 1986.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86-7266 Filed 4-1-86; 8:45 am]

BILLING CCDE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Scientific Advisory Committee; Closed Meeting

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of the DIA Scientific Advisory Committee has been scheduled as follows.

DATES: Thrusday & Friday, May 8-9, 1986, 9:00 a.m. to 5:00 p.m. each day.

ADDRESS: Sunnyvale, CA.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20301 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. The Committee will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA on related scientific and technical intelligence matters.

Dated: March 28, 1986.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-7238 Filed 4-1-86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee, National Energy Security Policy Task Force, Closed Meeting; Correction

Notice was given January 31, 1986, at 51 FR 4006 of a meeting of the Chief of Naval Operations Executive Panel Advisory Committee National Energy Security Policy Task Force on April 3-4, 1986, from 9 a.m. to 5 p.m. each day. The meeting has been changed to April 23, 1986, from 9 a.m. to 5 p.m. All other information in the previous notice remains effective.

For further information on this meeting contact Lieutenant Paul G. Butler, Executive Secretary of the Chief of Naval Operations Executive Panel Advisory Committee, telephone (703) 756-1205.

Dated: March 28, 1986.

William F. Ross, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve Federal Register Liaison Officer.

[FR Doc. 86-7230 Filed 3-31-86; 8:45 am]

BILLING CODE 3810-AE-M

Naval Academy, Academic Advisory Board to the Superintendent; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Academic Advisory Board to the Superintendent, United States Naval Academy, will meet on April 28, 1986, in Rickover Hall, Room 301, United States Naval Academy, Annapolis, Maryland. The meeting will commence at 8:15 a.m. and terminate at 1:00 p.m.

The purpose of the meeting is to advise and assist the Superintendent of the Naval Academy concerning the education of midshipmen. To accomplish this objective, the Board will review academic policies and practices of the Naval Academy and will submit

their proposals to the Superintendent to aid him in improving education standards and in solving Academy problems. The meeting will be open to the public for observation to the extent that space is available.

For further information concerning this meeting, contact: Major D. L. Smith, USMC, Military Secretary to the Academic Advisory Board, Office of the Academic Dean, United States Naval Academy, Annapolis, Maryland 21402–5000, Telephone No. (301) 267–2500.

Dated: March 28, 1986.

William F. Roos, Jr.,

Lieutenant, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 86–6891 Filed 4–1–86; 8:45 am]

BILLING CODE 3810-AE

DEPARTMENT OF EDUCATION

National Advisory Council on Continuing Education; Meeting

AGENCY: National Advisory Council on Continuing Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an Executive Committee meeting of the National Advisory Council on Continuing Education. It also describes the functions of the Council. Notice of meetings is required under section 10(a) of the Federal Advisory Committee Act. This Document is intended to notify the general public of their opportunity to attend.

DATES: April 9–10, 1986.

ADDRESS: 2000 L Street, NW, Suite 560, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Richard O. Brinkman, National Advisory Council on Continuing Education, 2000 L Street, N.W., Suite 560, Washington, D.C. 20036, Telephone: (202) 634–6077.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Continuing Education is established under section 117 of the Higher Education Act (20 U.S.C. 1109), as amended. The Council is established to advise the President, the Congress, and the Secretary of the Department of Education on the following subjects:

(a) An examination of all federally supported continuing education and training programs, and recommendations to eliminate duplication and encourage coordination among these programs;

(b) The preparation of general regulations and the development of policies and procedures related to the Administration of Title I of the Higher Education Act; and

(c) Activities that will lead to changes in the legislative provisions of this title and other federal laws affecting federal continuing education and training programs.

The meetings of the Council are open to the public. However, because of limited space, those interested in attending are asked to call the Council's office beforehand.

The Council will meet from 12:00 p.m. to 5:00 p.m. on April 9, and from 9:00 a.m. to 12:00 Noon on April 10, 1986. The proposed agenda includes:

—Revision of workplan for 1986 activities
—Budget revision
—Other Business

The public is being given less than 15 days notice of this meeting since an emergency meeting of the Executive Committee had to be called to review budget cuts which will affect the Council and its operations.

Records are kept of all Council proceedings and are available for public inspection at the office of the National Advisory Council on Continuing Education, 2000 L Street, N.W., Suite 560, Washington, D.C.

Signed at Washington, D.C., on March 31, 1986.

Richard O. Brinkman,

Chairman.

[FR Doc. 86–7430 Filed 4–1–86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

National Petroleum Council, Coordinating Subcommittee on U.S. Oil and Gas Outlook; Meeting

Notice is hereby given that the Coordinating Subcommittee on U.S. Oil and Gas Outlook will meet in April 1986. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Coordinating Subcommittee on U.S. Oil and Gas Outlook will be studying factors affecting the overall outlook for oil and gas in the U.S. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The Coordinating Subcommittee on U.S. Oil and Gas Outlook will hold its first meeting on Tuesday, April 22, 1986, immediately following the adjournment of the Committee on U.S. Oil and Gas Outlook meeting, which will begin at 10:00 a.m., in the 29th Floor Conference Room of Tenneco Inc., Tenneco Building, 1010 Milam Street, Houston, Texas.

The tentative agenda for the Coordinating Subcommittee on U.S. Oil and Gas Outlook meeting follows:

1. Discuss the scope of the study in response to the Secretary of Energy's request to examine the factors affecting the Nation's future supply and demand of oil and gas;

2. Discuss an organizational structure for the study;

3. Discuss a timetable for completion of the study;

4. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Coordinating Subcommittee on U.S. Oil and Gas Outlook is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Coordinating Subcommittee on U.S. Oil and Gas Outlook will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Pat Dickinson, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353–2430, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on March 27, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86–7304 Filed 4–1–86; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of submission of request for clearance to the Office of Management and Budget.

SUMMARY: The Department of Energy (DOE) has submitted the energy information collections, listed at the end

of this notice, to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by DOE.

Each entry contains the following information and is listed by the DOE sponsoring office: (1) The collection number(s); (2) Collection title; (3) Type of request, e.g., new, revision, or extension; (4) Frequency of collection; (5) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (6) Affected public; (7) An estimate of the number of respondents; (8) Annual respondent burden, i.e., an estimate of the total number of hours needed to respond to the collection; and (9) A brief abstract describing the proposed collection and, briefly, the respondents.

DATES: Comments must be filed on or before May 2, 1986. Last notice published Monday, March 17, 1986 (51 FR 9099).

ADDRESS: Address comments to Mr. Vartkes Broussalian, Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments may also be addressed to, and copies of the submissions obtained from, Mr. Gross at the address below.)

FOR FURTHER INFORMATION CONTACT: John Gross, Director, Data Collection Services Division (EI–73), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 252–2308..

SUPPLEMENTARY INFORMATION: If you anticipate commenting on a collection, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise Mr. Broussalian of your intent as early as possible.

Issued in Washington, DC, March 28, 1986.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

DOE COLLECTIONS UNDER REVIEW BY OMB

Collection number (1)	Collection title (2)	Type of request (3)	Response frequency (4)	Response obligation (5)	Affected public (6)	Estimated number of respondents (7)	Annual respondent burden hours (8)	Abstract (9)
NWPA–830R, A–G	Standard contract for disposal of spent nuclear fuel and/of high level radioactive waste.	Extension	A=One-time B=Annually C–F=Annually G=Quarterly	Mandatory	Businesses or other for profit.	55	221	NWPA–830R, A-G collect information necessary for DOE to dispose of spent nuclear fuel and high level waste. The respondents will report current and forecasted discharges annually and contract information quarterly. An annual report will be made to Congress. Respondents are electric utilities, vendors and owners of nuclear fuel.
FERC–50	Natural gas supply and delivery report.	Partial reinstatement.	One time filing	Mandatory	Businesses or other for profit.	1,600	35,200	The FERC–50 provides basic data to support analyses of the impacts of changes to pipeline system facilities, and analyses of the impacts of regulatory policy changes on the gas usage by natural gas consumers.

[FR Doc. 86–7305 Filed 4–1–86; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of February 3 Through 7, 1986

During the week of February 3 through February 7, 1986, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Implementation of Special Refund Procedures

Beacon Oil Company, 2/7/86, HEF–0203

The Doe issued a Decision and Order setting forth procedures to be used for distributing $2,404,055, plus accrued interest, remitted by Beacon Oil Company, a refiner of petroleum products, pursuant to a 1979 consent order. The funds will be available to customers who were injured as a result of their purchases of covered petroleum products from Beacon during the consent order period, August 19, 1973 through March 31, 1975. The Decision outlines specific information to be included in refund applications and discusses the presumptions and findings that the DOE will utilize in analyzing the applications.

Power Pak Company, Inc., 2/3/86, HEF–0155

The DOE issued a Decision and Order implementing a plan for the distribution of $75,102.50 received as result of a 1981 consent order entered into by the DOE and Power Pak Company, Inc., a reseller of motor gasolilne. The DOE determined that the Power Pak settlement fund should be distributed to customers that were injured by Power Pak's alleged failure to supply them with their adjusted base period allocations of motor gasoline during the period August 1, 1979 through December 31, 1979. The specific information required in applications for refund is set forth in the Decision.

Refund Applications

Charter Company/Georgia, et al., 2/4/86, RQ23–246, et al.

The Doe issued a decision approving the second-stage refund plans of Georgia and California for using funds from the Charter Co., Perry Gas Processors, Inc., Belridge Oil Co., National Helium Corp., Coline Gasoline Crop., and Palo Pinto Oil & Gas escrow accounts. Georgia stated that it planned to use $79,304 for the purchase of Trawl Efficiency devices which will help reduce the fuel consumption of shrimp fishermen. California proposed to use $3,000,000 for a traffic signal synchronization program and $900,000 for a fuel conservation workshop and loan program aimed at the fishing industry. The DOE found these programs would effect restitution to injured consumers of motor gasoline and No. 2–D diesel fuel. Accordingly, these applications were granted.

Gate Petroleum, Inc./Martin Oil Company, Hi-Way Market, Inc. Weiss Oil Corporation, 2/4/86, RF205-1, RF205-2, RF205-3

The DOE issued a Decision and Order granting refunds from the escrow account funded by Gate Petroleum, Inc. to three resellers of Gate motor gasoline. None of the claimant sought a refund in excess of the $5,000 presumption of injury for small claims. The refunds granted in this proceeding totaled $7,577 ($5,048 in principal, plus $2,529 in interest).

Gulf Oil Corporation/Clinton Gulf Service, et al., 2/6/85, RF40-00209, et al.

The DOE issued a Decision and Order granting 18 Applications for Refund from the Gulf Oil Corporation consent order fund filed by resellers and retailers of Gulf refined products. In considering the applications, the DOE found that each of the applicants had demonstrated that it would not have been required to pass through to its customers a cost reduction equal to the refund claimed. Accordingly, the firms were granted refunds totalling $32,078 ($27,177 in principal plus $4,901 in interest).

Gulf Oil Corporation/Flatley Oil Company, 2/5/86, RF40-3101

The DOE issued a Decision and Order correcting the amount of a refund previously granted to Flatley Oil Company from the Gulf Oil Company consent order fund. The DOE determined that Flatley should be granted an additional $40 in principal and $7 in interest from the Gulf account.

Gulf Oil Corporation/Gulf 77, 2/3/86, RF40-3050

The DOE dismissed an Application for Refund filed by Gulf 77, a retailer of Gulf products. The application was dismissed, since the DOE had already granted the firm a refund of $3,262, based on an identical application that Gulf 77 had previously filed. The DOE stated that if Gulf 77 did not provide a satisfactory explanation for the duplicate submissions within 30 days, the refund would be rescinded, and the matter might be referred to the U.S. Department of Justice for further investigation and possible criminal prosecution.

Gulf Oil Corporation/Lodi Truck Service, Inc., et al., 2/7/86, RF40-419, et al.

The DOE issued a Decision and Order granting refunds from the Gulf Oil Corporation deposit escrow fund to 32 end users of Gulf refined petroleum products. The refunds granted in this proceeding total $263,310, representing $223,081 in principal and $40,229 in interest.

Gulf Oil Corporation/Storey Oil Company, Inc., et al., 2/7/86, RF40-28, et al.

The DOE issued a Decision and Order granting refunds from the Gulf Oil Corporation deposit escrow fund to 23 purchasers of Gulf refined petroleum products. All of the refund applicants were resellers or retailers who demonstrated that they would not have been required to reduce selling prices to their customers by the amount of the refund they received. The refunds to these firms totaled $86,399, representing $73,197 in principal and $13,202 in interest.

Hendel's, Inc./City Coal Company, Stonington Chevron, Kyttle's Chevron, 2/7/86, RF79-22, RF79-23, RF79-24.

The Office of Hearings and Appeals granted Applications for Refund filed by three claimants from a fund obtained through a consent order entered into by the agency with Hendel's, Inc., a reseller of motor gasoline. One of the applicants was an end-user and two were retailers who requested refunds below the $5,000 small claims level. The total amount of the refunds granted was $4,928, consisting of $2,869 in principal plus $2,059 in interest.

Leese Oil Company/Roberts T.B.A. Service, et al., 2/3/86, RF211-2, et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by three resellers or motor gasoline that sought a portion of a consent order fund remitted by Leese Oil Company. Each applicant provided evidence that it purchased motor gasoline from Leese and requested a refund below the $5,000 small claims level. The DOE determined that each applicant should receive a refund based on the volume of motor gasoline it purchased from Leese during the consent order period. The refunds approved totaled $6,871 ($5,814 principal plus $1,057 interest).

Seminole Refining, Inc./Autry Petroleum Company, 2/7/86, RF111-14

Autry Petroleum Company filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Seminole Refining, Inc. The firm demonstrated purchases of No. 2 fuel oil and No. 5 fuel oil from Seminole during the consent order period. Using a volumetric methodology, the DOE determined that Autry's claim was below the $5,000 small claims level. The DOE granted Autry a refund of $3,530.64 plus accured interest of $2,877.07 for a total refund of $6,407.71.

Seminole Refining, Inc./Oil Dri Corporation of Georgia, 2/5/86, RF111-15

Oil Dri Corporation of Georgia filed an Application for Refund in which it sought a portion of the fund obtained by the DOE through a consent order entered into with Seminole Refining, Inc. The applicant demonstrated that it was an end user of No. 5 fuel oil purchased from Seminole during the consent order period. Based on a volumetric methodolity, the DOE granted Oil Dri a refund of $3,054.67 in principal and $2,475.24 in accrued interest for a total refund of $5,529.91.

Thompson Oil Company, Inc./Bridge's Shell, 2/6/86, RF185-1

Bridge's Shell filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Thompson Oil Company, Inc. The firm demonstrated purchases of motor gasoline from Thompson during the consent order period. Using a volumetric methodology the DOE determined that Bridge's claim was below the $5,000 small claims level. The DOE therefore granted Bridge's a refund of $2,278.54 plus accrued interest of $1,183.20 for a total refund of $3,461.74.

Union Texas Petroleum Corporation/Borg-Warner Chemicals, Inc., BASF Wyandotte Corp., 2/3/86, RF104-8, RF104-9

The DOE issued a Decision and Order concerning two Applications for Refund filed by firms seeking a portion of a consent order fund remitted by Union Texas Petroleum Corporation. In considering the applications, the DOE concluded that the applicants were end-users of propane purchased from Union Texas and that they should receive a refund based upon the total volume of their eligible purchases. Using a volumetric methodology, the DOE granted refunds to the firms totaling $1,412,284, consisting of $828,425 in principal and $583,859 in interest.

Dismissals

The following submissions were dismissed:

Name and Case No.

Alfie's Garage, RF40-2312
Alps Tire and Service Co., RF40-160
Bob Staton Service, RF40-1537
Broadway Electric, Inc., RF193-1
Capitol Gulf Service Station, RF40-2935
Causey's Gulf Station, RF40-2295
Corner Gulf, RF40-2292
Dan Crippen, RF40-2784
David's Shepheredsville Gulf, RF40-2328
Dean & Sons Gulf Service, RF40-400
Edsal Road Gulf, RF40-2237
Epp Stich & Sons Gulf, RF40-2937
ERA/Mountain Fuel Supply Co., KRZ-0013
Fletcher Oil Company, RF40-2783
Frank Bittner Gulf, RF40-1613
G & M Automotive, RF40-2432
Gambrell's Gulf Service, RF40-1454
Gene's Gulf Service, RF40-1414
Griffin's Gulf, RF40-2283
Isham, Lincoln & Beale, HFA-0310
Katonah Gulf Service, RF40-409
Ketterle Gulf, RF40-1439
L.C. Carter, RF40-2291
Marbury Gulf, RF40-2386
Marty's Service, RF40-66
McLaughlin's Gulf, RF40-1602
Mendon Gulf Station, RF40-1434
Merritt Gulf, RF40-1284
Nederlands Foods, RF40-2738
Paroquet Gulf, RF40-2325
Ridgeway Gulf, RF40-1415
Siew Corp., RF40-2223
Wade's Grocery, RF40-1864
Walt's Gulf Service Station, RF40-739
Waretown Gulf, Inc., RF40-2920
Wayne's Gulf Service, RF40-2213

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy*

Guidelines, a commercially published loose leaf reporter system.

March 16, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86-7306 Filed 4-1-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[SAB-FRL-2996-1]

Science Advisory Board, Clean Air Scientific Advisory Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given of a meeting of the Clean Air Scientific Advisory Committee (CASAC) of the Science Advisory Board. The meeting wil be held April 21-22, 1986, starting at 9:15 a.m. on April 21 and ending at approximately 5:00 p.m. on April 22. The meeting will be held at the U.S. Environmental Protection Agency, Environmental Research Center, Main Auditorium, Route 54 and Alexander Drive, Research Triangle Park, North Carolina.

The purpose of the meeting is to allow the Committee to review and provide its advice to the Agency on: (1) The November 1985 revised draft *Air Quality Criteria Document for Ozone*; and (2) the March 1986 draft of the *Review of the National Ambient Air Quality Standards for Ozone: Assessment of Scientific and Technical Information—Draft Staff Paper.*

The Criteria Document (EPA Document 600/8-83-028B, November 1985) was previously made available and copies have been exhausted. Copies of the March 1986 draft Staff Paper may be obtained from David McKee, Strategies and Air Standards Division, Office of Air Quality Planning and Standards (MD-12), U.S. EPA, Research Triangle Park, North Carolina, 27711, (CML) (919) 541-5531, (FTS) 629-5531. Written comments on the draft staff paper will be accepted through June 20, 1986. Comments should be sent to Dr. David McKee at the previous address.

The meeting is open to the public. Any member of the public wishing to attend or obtain information should contact Mr. Robert Flaak, Executive Secretary, Clean Air Scientific Advisory Committee (CASAC), Science Advisory Board (A-101F), U.S. EPA, Washington, DC, 20460 (202) 382-2552, prior to the meeting. Persons wishing to make brief oral statements at the meeting must contact Mr. Flaak no later than close of business on April 15, 1986.

Dated: March 27, 1986.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 86-7246 Filed 4-1-86; 8:45 am]

BILLING CODE 6560-50-M

[PP 3G2940/T510 and PP 4G3035/T511; FRL-2995-9]

Pesticides; American Hoechst Corp.; Extension of Temporary Tolerances

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA has extended temporary tolerances for the combined residues of the herbicide ethyl-2-[(4-(6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoate and its metabolites of 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoic acid and 6-chloro-2,3-dihydrobenzoxazol-2-one in or on certain raw agricultural commodites.

DATE: These temporary tolerances expire March 5, 1987.

FOR FURTHER INFORMATION CONTACT:

By mail:

Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1830)

SUPPLEMENTARY INFORMATION: EPA issued a notice, which was published in the **Federal Register** of May 8, 1985 (50 FR 19452), announcing the extension of temporary tolerances for the combined residues of the herbicide ethyl-2-[(4-(6-chloro-2-benzoxazolyl)oxy]phenoxy] propanoate and its metabolites of 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy] propanoic acid and 6-chloro-2,3-dihydrobenzoxazol-2-one in or on the raw agricultural commodity soybean seed at 0.05 part per million (ppm) (calculated as a parent compound). A temporary tolerance was also published in the **Federal Register** of May 8, 1985 (50 FR 19452) extending tolerances for the combined residues of the herbicide and its metabolites in or on the raw agricultural commodities rice seed and straw at 0.02 ppm (calculated as a parent compound), the temporary tolerance for rice seed and straw have been increased from 0.02 ppm to 0.05 ppm. These tolerances were issued in response to pesticide petitions PP 3G2940 and PP 4G3035, submitted by American Hoechst Corp., Agricultural Division, Route 202-206 North, Somerville, NJ 08876. The company has requested extension of temporary tolerances for the combined residues of the herbicide and its metabolites in or on these raw agricultural commodities.

These temporary tolerances have been extended to permit the continued marketing of the raw agricultural commodities named above when treated in accordance with the provisions of experimental use permit 8340-EUP-8, which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the extension of these temporary tolerances will protect the public health. Therefore, the temporary tolerances have been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. American Hoechst Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire March 5, 1987. Residues not in excess of this amount remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification

statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: March 25, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-7248 Filed 4-1-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30258; (FRL-2993-5)]

E.I. DuPont De Nemours & Co.; Application To Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing an active ingredient not included in any previously registered product pursuant to the provision of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comment May 2, 1986.

ADDRESS: By mail submit comments identified by the document control number [OPP-30258] and the file number (352-UGO) to:

Robert Taylor, Product Manager, Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

In person, bring comments to: Rm. 236, CM#2, Attn: PM 25, Registration Division (TS-767C), Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4. p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Rober Taylor, PM Rm. 245, CM#2, (703-557-1800).

SUPPLEMENTARY INFORMATION: E.I. du Pont de Nemours and Co., Agricultural Chemicals Dept, Wilmington, DE 19898, has submitted an application to EPA to register the pesticide product Du Pont Escort ™ Herbicide Dry Flowable, EPA File Symbol 352-UGO, containing the active ingredient metsulfuron methyl methyl 2-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]amino] sulfonyl]benzoate at 60 percent, pursuant the provision of section 3(c)(4) of FIFRA. The application proposes that the product be classified for general use for weed control on non-cropland areas. Notice of receipt of this application does not imply a decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register.** The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703-557-3262), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: March 20, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-6743 Filed 4-1-86; 8:45 am]

BILLING CODE 6560-50-M

[PP 6G3310/T509; FRL-2993-8]

3,6-Dichloro-2-Pyridinecarboxylic Acid; Establishment of Temporary Tolerances; Dow Chemical U.S.A.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for residues of the herbicide 3,6-dichloro-2-pyridinecarboxylic acid in or on certain raw agricultural commodities. These temporary tolerances were requested by Dow Chemical U.S.A.

DATE: These temporary tolerances expire March 4, 1987.

FOR FURTHER INFORMATION CONTACT:

By mail:

Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1830).

SUPPLEMENTARY INFORMATION: Dow Chemical U.S.A., Agricultural Products Dept., P.O. Box 1706, Midland, MI 48640, has requested in pesticide petition PP 6G3310 the establishment of temporary tolerances for residues of the herbicide 3,6-dichloro-2-pyridinecarboxylic acid in or on the following raw agricultural commodities:

Commodities	Parts per millions
Barley, grain	3
Barley, forage	9
Barley, straw	9
Cattle, meat, fat, and meat byproducts	0.1
Eggs	0.1
Goats, meat, fat and meat byproducts	0.1
Hogs, meat, fat, and meat byproducts	0.1
Horses, meat, fat, and meat byproducts	0.1
Milk, whole	0.05
Oats, grain	3
Oats, forage	9
Oats, straw	9
Poultry, meat, fat, and meat byproducts	0.05
Sheep, meat, fat, and meat byproducts	0.1
Wheat, grain	3
Wheat, forage	9
Wheat, straw	9

These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 464-EUP-88, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Dow Chemical U.S.A. must immediately notify the EPA of any

findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire March 4, 1987. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 610-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: March 20, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-6740 Filed 4-1-86; 8:45 am]

BILLING CODE 6560-50-M

[PF-444; FRL-2993-6]

Pesticide Tolerance Petitions; Monsanto Co.; et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide petitions relating to the establishment and/or withdrawal of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF-444] and the petition number; attention Product Manager (PM) named in each petition, at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

In person, bring comments to:

Information Services Section (TS-757C), Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (TS-767C), Attn: (Product Manager (PM) named in each petition), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

In person: Contact the PM named in each petition at the following office location/telephone number:

Product manager	Office location/ telephone number	Address
PM-23, Richard Mountfort.	Rm. 247, CM#2 (703-557-1830)	EPA, 1921 Jefferson Davis Hwy, Arlington, VA.
PM-25, Robert Taylor.	Rm. 251, CM#2 (703-557-1800)	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions (PP) relating to the establishing and/or withdrawal of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

I. Initial Filing

1. *PP 6F3346.* Monsanto Co., 1101 17th St., NW, Washington DC 20036. Proposes amending 40 CFR Part 180 by establishing tolerances for the combined residues of the herbicide *S*-(2,3,3-trichloroallyl diisopropylthiocarbamate) and its major metabolite, 2,3,3-trichloro-2-propene sulfonic acid, in or on the raw agricultural commodities as follows:

Commodities	Part per million (ppm)
Barley forage	0.3
Cattle, meat, fat, meat byproducts (mbyp)	0.01
Chickens, meat, fat, mbyp	0.01
Eggs	0.01
Goats, meat, fat, mbyp	0.01
Hogs, meat, fat, mbyp	0.01
Horses, meat, fat, mbyp	0.01
Milk	0.01
Wheat forage	0.3

The proposed analytical method for determining residues is gas chromatography using Ni^{63} electron capture detection. (PM-25).

2. *PP 6F3367.* Dow Chemical Co., P.O. Box 1706, Midland, MI 48640. Proposes amending 40 CFR 180.292 by establishing tolerances for residues of the herbicide picloram (4-amino-3,5,6-trichloropicolinic acid) in or on the commodity grasses, forage and hay at 225 ppm. The proposed analytical method for determining residues is gas chromatography using NI^{63} electron capture detection. (PM-25).

II. Petition Withdrawal

PP 4F3093. EPA issued a notice published in the Federal Register of July 18, 1984 (49 FR 29134) which announced that Elanco Products Co., 740, South Alabama St., Indianapolis, IN 46285, had filed PP 4F3093 with the Agency proposing to amend 40 CFR 180.416 by establishing a tolerance for residues of the herbicide ethalfluralin [*N*-(2-methyl-2-propenly)-2,6-dinitro-4-(trifluoromethyl)benzenamine] in or on the commodity cottonseed at 0.05 ppm.

Elanco Products Co. has withdrawn this petition without prejudice to future filing in accordance with 40 CFR 180.8. (PM-23)

Authority: 21 U.S.C. 346a.

Dated: March 20, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-6742 Filed 4-1-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-361114, FRL-2995-2]

Policy Statement on Minor Uses of Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice states new EPA policies regarding registration of pesticides for minor uses on food and feed crops. These new policies are intended to provide incentives for the development of minor use tolerances and registrations under the Federal

Food, Drug, and Cosmetic Act (FFDCA), and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This policy statements EPA's previous policy statement on minor uses as published in the **Federal Register** of March 5, 1979 (44 FR 12097).

EFFECTIVE DATE: Effective on April 2, 1986.

ADDRESS: By mail, submit written comments identified by the document control number [OPP-36114] to:

Information Service Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

In person, bring comments to: Rm 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA

FOR FURTHER INFORMATION CONTACT:

Hoyt L. Jamerson, Minor Use Officer, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

Office location and telephone number: Rm. 716B, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2310)

SUPPLEMENTARY INFORMATION: The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) requires Federal registration of all uses of pesticide products marketed in the U.S. and makes it unlawful to use a registered pesticide in a manner inconsistent with its labeling. In addition, before any pesticide can be registered under FIFRA for use on a food or feed crop, the Environmental Protection Agency (EPA) must establish a tolerance under the Federal Food, Drug and Cosmetic Act (FFDCA) or, if appropriate, grant an exemption from the requirement of a tolerance.

For many small scale, infrequently needed, or specialty pesticide uses, there is insufficient economic incentive on the part of pesticide product manufacturers to justify the timely development of data needed to register the use in accordance with the provisions of FIFRA and FFDCA. Such uses, lacking adequate market incentives to offset the cost of meeting statutory requirements for requirements for registration, are generally defined as "minor uses." In addition, potential liability costs can also be a disincentive to these minor use registration. Since many specialty or minor crops are very valuable on a per acre basis, product liability losses may exceed any profits the pesticide industry derives from product sales.

EPA recognizes that the continued availability of pesticides registered for minor uses is essential in the production of a diverse food supply and has taken an active role in addressing the problem by giving minor uses special attention in its regulatory activities. Amendments to FIFRA effected by the Federal Pesticide Act (FPA) of 1978 have benefited minor uses by providing for more flexible data requirements for pesticide registration. In particular, the so-called "minor use amendment," section 3(c)(2)(A) of FIFRA, directs EPA to make minor use data requirements commensurate with the anticipated extent and pattern of use and degree of exposure of man and the environment to the pesticide. EPA's policy statement on minor uses, as published in the **Federal Register** of March 5, 1979 (44 FR 12097), reflects the 1978 amendments as they apply to minor uses, including section 3(c)(2)(A), the conditional registration authority in section 3(c)(7), and other ameliorative amendments such as section 2(ee), which permits the use of a pesticide on an unlabelled pest, unless specifically prohibited, so long as the crop site appears on the label. In addition, as proposed in the March 5, 1979 (44 FR 12097) minor use policy statement, EPA has implemented expanded crop groups under 40 CFR 180.34(f), further alleviating the impact of registration and tolerance data requirements on minor uses. The crop grouping scheme enables the establishment of tolerances for a group of crops based on residue data for certain crops that are representative of the group. In most cases, acceptable residue data for the representative crops are adequate to support a crop group tolerance. Once a crop group tolerance is established, the tolerance level applies to all raw agricultural commodities in the group, unless a crop is specifically excluded from the crop group tolerance.

Although EPA's flexible administrative policies have done much to improve the outlook for new minor use registrations during the past several years, there is a continuing need for timely approval of additional minor use pesticides. Moreover, some existing minor use registrations may be voluntarily cancelled or suspended as the Agency proceeds with the review and reregistration of all currently registered pesticides, through its Registration Standards program. It is likely that some minor uses of existing pesticides will not be reregistered since pesticide producers may not find it economically feasible to develop data needed to support their continued registration.

The Agency recognizes that the pesticide industry and growers are concerned with the minor use issue and that their contribution to the minor use effort may be expanded, provided sufficient incentives are available to help offset the costs associated with the establishment of tolerances and registrations for pesticide minor uses. EPA has, therefore, adopted the following policies intended to provide incentives for registration of minor uses:

1. For crops with low dietary intake, EPA will consider the approval of tolerance proposals supported by residue data from geographically limited areas. The criteria defining low dietary intake and a list of some crops which meet these criteria are provided in Unit I.A. Tolerance proposals for crops which do not meet the criteria for low dietary intake will be considered for approval on a case-by-case basis, in accordance with a separate set of criteria discussed in Unit I.B. If approved, such tolerances could be used in support of regional registrations for new uses of existing pesticides. For some regional pest problems, regional registration may also be an option for retaining a minor use registration that would otherwise be lost in the course of reregistration due to residue data deficiencies.

2. The Agency has determined that it is in the public interest to waive tolerance petition fees for pesticide uses that lack commercial feasibility to the pesticide industry. A request for waiver or refund of tolerance petition fees will be granted when the petitioner satisfies the criteria for determining commercial feasibility of the pesticide use, as discussed in Unit II. The fee for requesting a waiver (currently $1,100) will be refunded if the request is granted.

3. EPA will also give priority handling and special consideration to all tolerance petitions that qualify for a fee waiver under the conditions specified in Unit II.

These new policy provisions are being implemented with the intent of providing practical incentives to encourage minor use tolerances and registrations of existing pesticides. From the standpoint of EPA's overall policy on minor uses, these new policies will supplement the Agency's existing policy statement on minor uses as issued in March 1979. Thus, the specific policy incentives described in this Notice are not intended to stand alone as a comprehensive policy statement on minor uses of pesticides.

Not all minor uses as generally defined under FIFRA will necessarily qualify for the incentives offered by

these new policy provisions. Moreover, some minor use tolerance petitions may qualify for all of the incentives offered, while other petitions may qualify for only one of these incentives. For example, a tolerance petition that qualifies for consideration based on geographically limited residue data may or may not also qualify for a tolerance fee waiver depending on whether it meets the criteria specific to the fee waiver policy provision. Conversely, a petition that qualifies for a tolerance fee waiver may or may not qualify for, or even request, a tolerance based on geographically limited residue data; however, a petition qualifying for a fee waiver will automatically also qualify for priority handling by the Agency. Separate criteria are needed for these policy provisions; dietary exposure and risk considerations determine whether EPA can reasonably set a tolerance based on less than nationwide residue data, while economic considerations determine whether a petition is eligible for a fee waiver and priority handling.

The new policy provisions described in this Notice will serve to encourage minor use registrations primarily in cases where a tolerance is the major outstanding requirement for the minor use registration. This is very often the case for minor uses of pesticides with existing registrations and tolerances already supported by required data on potential human health and environmental effects. However, it should be understood that EPA will also continue to consider aspects of potential exposure and risk through routes other than dietary intake when making decisions on minor uses, applying the statutory criteria of no unreasonable risks to human health or the environment. In making decisions on individual minor use registrations, the Agency will evaluate in particular the need for data to support the registration of minor uses that may present site-specific exposures and risks. For example, an application to amend a registration to allow greenhouse use of a pesticide product registered for field crop use would require special consideration of potential risks to applicators and greenhouse workers.

Regardless of the incentives that the Agency may provide for the development of data for minor uses, it is likely that the pesticide industry will find that certain minor uses continue to lack commercial feasibility. In such instances, pesticide user groups (including grower organizations) should consider the option of providing assistance in developing the data required to support registration of minor use pesticides. Assistance provided by user groups could range from participation in efficacy, crop residue and phytotoxicity studies to direct funding of human safety or environmental studies.

If the pesticide industry decides not to register or reregister a pesticide minor use, but is willing to cooperate with a user group or any other interested party, a third party registration may be obtained for the use, provided the data requirements for registration are fulfilled. A "third party" is any individual, group, or state or federal government organization other than EPA or the pesticide producer. The data required to support a third party registration are identical to the data that would be required from the pesticide industry. Third party registrations may also help to lessen the liability concerns of pesticide companies. When product liability concerns preclude registration of a minor use by the pesticide manufacturer, user groups may choose to assume responsibility for potential crop losses by forming contractual agreements that would waive the registrant's liability for crop production losses.

I. Tolerances Based on Geographically Limited Residue Data

In the **Federal Register** of March 10, 1982 (47 FR 10211), EPA announced that it would consider for approval tolerances for minor uses based on residue data from geographically limited areas. As the Agency state at that time, the development of residue data from all geographical regions where the crop is grown unnecessarily delay efforts to obtain tolerances for minor uses, since data might be required from regions where the pest problem does not exist, or the pesticide is simply not useful.

By requiring residue data only from the area where the pesticide will be used, the Agency can reduce the cost of developing data in support of minor use needs that are geographically limited. Product registration will be restricted to those geographical areas for which sufficient residue data have been submitted and approved. In order to expand the usage area, the registrant must submit residue data which are representative of the expanded use area.

Although the Agency will consider tolerances based on geographically limited residue data for approval on any crop, such tolerances may not be appropriate for some pesticide uses. The primary consideration in determining whether a tolerance can be supported by geographically limited residue data is whether there is reasonable certainty that potential variations in residue levels will not present a public health hazard. Tolerances for crops which have relatively low dietary intake, such as the raw agricultural commodities listed in Unit I.A. can generally be supported by the submission and approval of geographically limited residue data from the specified use area. Tolerances for all other crops will be considered for approval only when the peititioner can provide information to convince the Agency that there is little likelihood of use of the pesticide on the crop outside the limited geographical area, and the residue data are representative of the specified use area, according to criteria which are explained later in this unit.

Potential applicants may request the Agency to determine whether a pesticide use is eligible for consideration for a tolerance based on geographically limited residue data, prior to actually conducting residue field studies. In consideration of the use is requested based on low dietary intake, only the identity of the crop is required. The applicant should, however, submit any available information that would be helpful to the Agency in determining field production, and use of the crop as a food or livestock feed commodity. Requests for crops that do not qualify for consideration based on low dietary intake must include sufficient information to persuade the Agency that there is little likelihood of use of the pesticide outside of the proposed geographically limited use area.

Requests for determination of eligibility under this policy provision should be submitted by mail to:

Minor Use Officer, Registration Support and Emergency Response Branch, Registration Division (TS–767), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, Washington, DC 20460.

In person bring request to: Room 716B, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

The Agency will attempt to respond to written requests for a determination of eligibility for tolerances based on geographically limited residue within 30 working days of receipt.

A. Criterial for Crops With Low Dietary Intake

For the purposes of this policy the criteria used to define crops with low dietary intake are as follows: (1) Relatively low domestic production (less than 100 million pounds per year produced in the U.S.), (2) low average per capita dietary consumption (average of less than one pound per person per year consumed), and (3) lack of animal

feed concerns. Tolerance proposals for crops meeting all three criteria automatically qualify for consideration for approval based on geographically limited residue data.

For guidance, the Agency has prepared a list of some of the more common raw agricultural commodities that meet the criteria for low dietary intake. Although production and dietary consumption data were not available for some of the crops included on the list, upon evaluation they were presumed to meet the above criteria. EPA will periodically revise the list to add or delete crops as production, dietary contribution, and livestock feed concerns change with time or become better known. It should be understood that by compiling a list of this kind, EPA does not intend to imply that other crops will not qualify for tolerances based on geographically limited residue data.

The following crops will automatically be considered for a pesticide tolerance based on the review and approval of geographically limited residue data:

Acerola
Allspice
Amaranth, Chinese
Anise
Anon
Arracacha
Arragula
Arrowroot
Artichokes, globe
Artichokes, Jerusalem
Asparagus
Atemoya
Barbados cherry
Basil
Bay
Beechnuts
Blackberries
Bok choy
Boysenberries
Brazil nuts
Breadfruit
Broccoli, Chinese
Broccoli raab
Brussels sprouts
Buchwheat
Burdock
Butternuts (nuts)
Cabbage, Chinese
Cabbage, sui
Cactus fruit
Cactus pads
Calamondin
Canistel
Carambola
Cardoon
Carob
Caraway
Casabas
Cashews
Cassavas
Cassias
Celeriac
Ceriman
Cherimoya
Chestnuts
Chicory
Chinquapins
Chives
Cidra
Cinnamon
Citron
Cloves
Coconuts
Collards
Corazon
Coriander
Crabapples
Crenshaws
Cress
Cumin
Currants
Curry leaf
Dandelions
Daikon
Dasheen
Dates
Dates, Chinese
Dewberries
Dill
Eggplant
Elderberries
Endive
Escarole
Feijoa
Fennel
Figs
Filberts
Garlic
Genip
Ginger
Gingko
Ginseng
Gooseberries
Groundcherries
Guanabana
Guava
Hazelnuts
Hickory nuts
Hops
Horseradish
Huckleberries
Jicamba
Jujube
Juneberries
Kai choy
Kale (kaailan)
Kiwi
Kohlrabi
Kumquats
Langsat
Leeks
Lentils
Loganberries
Longan fruit
Loquat
Lotus root
Lychee
Macadamia nuts
Mace
Malanga
Maney
Mongoes
Marjoram
Mint
Mizuna
Mulberries
Mustard, Chinese
Napa
Naranjilla
Nasturtium
Nutmeg
Okra
Olallieberry
Onions, green
Oregano
Oyster plant
Pakchoi
Pak choy
Pak toy
Papayas
Paprika
Parsley
Parsley, Chinese
Parsley root
Parsnip
Passion fruit
Pawpaws
Pepino dulce
Pe tsai
Peppers, chili
Peppers, non-bell
Persimmons
Pimentos
Pine Nuts
Pinon
Pistachios
Pitanga cherry
Plantains
Poke greens
Pomegranates
Poppy
Prickly pear fruit
Quince
Radicchio
Rapini
Raspberries
Rhubarb
Rosehips
Rosemary
Rutabagas
Sage
Salsify
Sapodilla
Sapote, white/green/black
Savory
Shallots
Soursop
Sweetsop
Swiss chard
Tamarind
Tanier
Taro
Tarragon
Thyme
Towelgourd
Tumeric
Turnip, roots and tops
Water chestnuts
Watercress
Yambean, tuber
Yautia
Yautier
Youngberries
Yucca
Yuquilla
Zapote

B. Criteria For Case-By-Case Determinations

As stated earlier, tolerance proposals for crops which do not meet the criteria for low dietary intake, will be considered for approval on a case-by-case basis. The following criteria will be used to determine whether a tolerance proposal for a crop which does not meet the criteria for low dietary intake will be considered for approval based on geographically limited residue data:

1. *Likelihood of expanded use.* The petitioner must provide information that would allow the Agency to conclude that there is little likelihood of use of the pesticide outside of the geographically limited area. This would be the case when the range of the pest is limited to the proposed use area. Documentation of the known range of the pest would be required to show that the pest is not known to occur outside of the proposed use area. Alternatively, the pest may be widely distributed but not of economic importance (i.e., not requiring pesticide control) to the production of the crop outside of the geographically limited area. Documentation of this would require information regarding where the crop is grown nationally, the range of the pest, and where the pest is of economic importance in the production of the crop. In all cases, the burden of proof is with the petitioner to provide information that would allow the Agency to conclude that there is little likelihood of use of the pesticide outside of the geographically limited area.

2. *Quality of the available residue data.* The Agency will evaluate whether data from one or two geographical areas reflect more than one growing season and a representative range of growing conditions. Growing conditions such as weather (including rainfall, temperature, humidity, etc.), which may vary from one growing season to another, as well as other variables such as soil conditions, pH level, and local agricultural practices, may significantly affect residue levels. If the residue data from limited geographical areas reflect the variable growing conditions of the proposed use area, then a tolerance with a geographically limited registration will be considered. Geographically limited residue data are not acceptable, however, to support a crop group tolerance.

3. *Availability of data on similar crops.* The Agency will use residue data from similar crops in evaluating whether a conclusion on the correct tolerance level is possible.

4. *Variability of the residue data base.* Geographically limited residue data are more likely to be acceptable for pesticides uses that result in no detectable residues, versus uses that result in finite residues that are highly variable. Residue data for the crop under consideration, as well as related crops, will be considered in making this determination. In all cases the Agency will evaluate all pertinent residue data that are available, including data from areas outside the geographically limited area. Geographically limited residue data for pesticides that are shown to be non-systemic are also more likely to be acceptable than for systemic pesticides. In general, residue levels for systemic pesticides tend to be more variable than residue levels for non-systemic pesticides.

5. *Toxicity of the pesticide.* The Agency will be more likely to accept geographically limited residue data for pesticides which have no special toxicological concerns such as teratogenicity, acute toxicity, delayed neurotoxicity, oncogenicity, etc. Before proceeding to conduct residue studies, petitioners may wish to contact the appropriate EPA Product Manager regarding the status of toxicological studies submitted in support of the pesticide.

II. Tolerance Fee Waivers

Section 408 of the FFDCA provides that fees will be charged to cover the cost of processing petitions for tolerance. Such fees may be waived or refunded, however, when the Administrator determines that such a waiver or refund will promote the public interest or that payment of such a fee would work an unreasonable hardship on the person on whom the fee is imposed. The regulations dealing with tolerance fees (40 CFR 180.33) provide for an automatic fee waiver for tolerance petitions submitted by the Interregional Research Project Number 4 (IR–4 Project). The IR–4 Project is a nation-wide cooperative effort including EPA, the U.S. Department of Agriculture, state agricultural experiment stations, and industry. The IR–4 Project is responsible for establishing national priorities and assisting in the development of data for pesticide minor uses that are in the public interest.

The Agency has determined that it is in the public interest to waive tolerance petition fees for pesticide minor uses that lack commercial feasibility to the pesticide industry. A tolerance petition fee waiver or refund will be granted if the petitioner can demonstate that the expected annual number of acre-treatments is less than the annual number of acre-treatments which would be required to generate sufficient revenue to pay back the registrant's costs within 3 years. A fee of $1,100 must accompany every request for a waiver or refund, except that the $1,100 fee is not required of any person who has no financial interest in the action. The fee for requesting a waiver or refund will be refunded if the request is granted. All tolerance petition fee waivers or refunds must be requested in accordance with the regulations regarding tolerance processing fees published in the **Federal Register** of January 6, 1986 (51 FR 844). The Agency will try to respond to requests for tolerance fee waivers or refunds requested under the provisions of this policy within 30 working days of receipt. A petition for which a waiver of fees has been requested will not be accepted for processing until the tolerance petition fee has been waived or, if the waiver has been denied, the appropriate fee is submitted.

The fee waiver request must include resonable estimates for the following variables: (1) The registrant's total costs of required studies and fees; (2) the revenue received by the registrant for the volume of pesticide necessary to treat one acre of crop (i.e., one acre-treatment); and (3), the expected number of acre-treatments to be made annually with the pesticide at full market potential. A pay period of three (3) years, and an after-tax rate or return on sales of 10 percent are fixed standards in the pay back calculation. The costs of required studies should be itemized by study.

Estimates for the following parameters, used by the applicant to calculate the expected number of annual acre-treatments, are also required: (1) Acres of crop grown, (2) total number of acres treated for the pest or pests, (3) average number of applications per growing season, and (4) expected market share of the pesticide product under consideration.

In determining the total cost of required studies, only those studies conducted in support of the proposed use will be considered. This may include the cost of studies to evaluate residue chemistry, performance and plant protection, environmental fate, worker exposure or any other studies that may be required to assess potential hazards to man and the environment associated with the use of the pesticide product or the tolerance residues. The cost of all studies should be based on commercial rates; thus a reasonable monetary value should be assigned to subsidies provided by public or private agents. For example, a monetary value for subsidies provided by growers or federal or state agents in the form of test plots for food crops or participation in field studies, or any other studies specifically required by the Agency in support of a minor use registration should be included in the equation variable.

For sake of clarity, the following numerical example is provided.

Assumptions

1. Cost of testing and tolerance fees is $21,000.
2. Revenues received by the registrant for sufficient pesticide to make one acre-treatment is $5.
3. After-tax rate of return on sales is 10 percent.
4. Pay back period is 3 years.
5. Expected number of acre-treatments (includes multiple applications) per year is 11,000 acre-treatments.

Calculations

Step 1: $21,000/$5 per acre-treatment x.10) equals 42,000 acre-treatments.

Step 2: 42,000 acre-treatments/3 years equals approximately 14,000 acre-treatments per year.

Decision Rule

If the expected number of acre-treatments per year is less than the calculated (i.e., derived through the pay back method) number of annual acre-treatments, then the use is eligible for a fee waiver.

Conclusion

Since the expected number of annual acre-treatments (11,000 acre-treatments) is less than the calculated number of annual acre-treatments required to generate sufficient revenue to pay back the registrant's costs within three years (14,000 acre-treatments), a tolerance petition for the use would qualify for a fee waiver.

III. Priority Handling of Tolerance Petitions Granted Public Interest Fee Waivers

All petitions for a tolerance or exemption from the requirement of a tolerance solely for those uses that qualify for a fee waiver (under the conditions specified in Unit II of this document) will be given priority handling and special consideration to ensure that Agency policies relating to minor uses are consistently applied. In addition, the Agency will continue to provide priority handling of all tolerance petitions submitted by the IR–4 Project. The petition and fee waiver request should be submitted to the Minor Use Officer, Registration Support and Emergency Response Branch, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

IV. Role of the IR–4 Project

In addition to its regulatory activities, the Agency works closely with the federally sponsored IR–4 Project. It is anticipated that the IR–4 Project will continue to serve as the national coordinating network for the identification of minor use needs and the development of data for the clearance of minor use pesticides. The Agency will continue to provide automatic fee waivers and priority handling for all petitions submitted by the IR–4 Project. Information regarding minor uses identified by IR–4 as requiring data to support registration may be obtained from the IR–4 Project, New Jersey Agricultural Experiment Station, Cook College, Rutgers, The State University, New Brunswick, New Jersey 08903.

V. Public Comments

Comments regarding the above policies are invited. Although this policy statement is effective as of April 2, 1986, the Agency will consider public comments received in response to this notice to determine the need for

modification of the minor use policies, as well as suggestions for other means of providing incentives for the development of minor use tolerances and registrations.

The Agency is also considering whether it should give priority in the review process to tolerance petitions that combine a pesticide use that qualifies for a tolerance fee waiver with a tolerance proposal for any other food or feed use of the pesticide. The Agency's intent is to provide an incentive for the pesticide industry to develop data for minor uses of pesticides concurrently with the development of data for uses which are economically important to the industry. The Agency requests public comments regarding the merit of this procedure.

Written comments, identified by the document control number [OPP-36114] may be sent by mail to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. In person, bring comments to: Room 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Dated: March 19, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 86-7000 Filed 4-1-86; 8:45 am]

BILLING CODE 6560-50-M

[OPPE-FRL-2996-5]

New Source Performance Standards for Residential Wood Combustion Units Negotiated Rulemaking Advisory Committee; Meeting

As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), we are giving notice of a two-day open meeting of the Advisory Committee negotiating New Source Performance Standards for Residential Wood Combustion Units.

The two-day meeting will be held on Thursday, April 17, and Friday, April 18, 1986. Both days, the meeting will be held at the National Institute for Dispute Resolution, 1901 L Street, NW., Suite 600, Washington, DC 20006. Both days, the meeting will start at 9:00 a.m. and run until completion.

The purpose of the meeting is to continue work on the substantive issues which the Committee has identified for resolution. These issues include labeling, affected facilities, the applicability date, and an economic model overview.

If interested in attending, or in receiving more information, please contact Cris Kirtz at (202) 382-7565.

Dated: March 22, 1986.

Milton Russell,

Assistant Administrator for Policy, Planning and Evaluation.

[FR Doc. 86-7406 Filed 4-1-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-50553; FRL-2996-7]

EPA-Toxic Substances Dialogue Group; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The EPA has scheduled a public meeting to discuss a proposal submitted by the Conservation Foundation's Toxic Substances Dialogue Group for EPA to develop a generic Significant New Use Rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA). This meeting was requested by the Toxic Substances Dialogue Group.

DATE: The meeting will be held on Thursday, April 17, 1986, from 12:30 p.m. to 4:00 p.m.

Meeting location: Capitol Holiday Inn, Apollo Room, 2nd floor, 550 C Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, Toll Free: (800-424-9065), In Washington, DC: (554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: EPA has scheduled a public meeting to discuss the development of a generic SNUR under section 5(a)(2) of TSCA.

I. Background

By letter dated October 30, 1985, the Conservation Foundation requested a meeting with EPA staff to discuss a proposal concerning changes in EPA's process to followup on new chemicals for which premanufacture notices have been submitted as required by section 5 of TSCA. This proposal was drafted by the Toxic Substances Dialogue Group, a group organized by the Conservation Foundation, that consists of representatives of chemcial industry trade associations and corporations, proublic interest groups, and State agencies interested in TSCA.

In a subsequent proposal submitted on March 20, 1986, the Dialogue Group recommended the development of a generic SNUR that would provide a mechanism for EPA to receive notice before a chemical substance that had completed premanufacture notice review is used in a manner for which there is a basis for concern. As proposed by the Toxic Substances Dialogue Group, the rule would establish criteria by which the Agency would decide whether substances submitted for premanufacture notice review should be subject to the generic SNUR. The rule would also establish triggers for when reporting is required. The Agency would administratively add or withdraw chemicals from the list of substances subject to the SNUR.

EPA met with representatives of the Dialogue Group, at their request, initially to develop a strategy to explore their proposal and to consider possible alternatives. As a result of a meeting held on March 20, 1986, the Dialogue Group has agreed to develop a draft rule to establish a generic SNUR, and EPA has agreed to provide a paper discussing the criteria that might be used to identify new chemicals that would be subject to the SNUR.

This **Federal Register** notice announces that EPA will hold a series of meetings with the Toxic Substances Dialogue Group to discuss their proposal recommending the development of a generic SNUR. The first meeting will be held on April 17, 1986, from 12:30 p.m. to 4 p.m. in the Apollo Room on the second floor of the Capitol Holiday Inn, 550 C Street, SW., Washington, DC. At this meeting, the discussion will address the paper to be submitted by EPA, which will outline criteria for listing new chemicals subject to the SNUR, and the Dialogue Group's first draft of the generic SNUR. Persons interested in attending the April 17th meeting or future meetings, or in receiving information about this activity should call the TSCA Assistance Office (TAO) at the telephone number listed above. A separate notice of meetings to be held subsequent to April 17th will not be published in the **Federal Register**. Therefore, anyone wishing to attend any future meetings in this series of discussions should contact TAO in order to be notified of such meetings.

II. Public Record

The EPA has established a public record for this activity (docket control number OPTS-50553). This record will include a summary of the April 17th and subsequent meetings as well as documents developed in the course of this activity. The record will be available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in Rm. E-107, 401 M St., SW., Washington, DC 20460. The Agency will supplement the record with

additional relevant information as it is received.

Authority: 15 U.S.C. 2604.

Dated: March 28, 1986.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 86-7407 Filed 4-1-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Community Banks, Inc. Employee Stock Ownership Trust; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 16, 1986.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Community Banks, Inc., Employee Stock Ownership Trust*, Middleton, Wisconsin; to become a bank holding company by acquiring 25 percent of the voting shares of Community Banks, Inc., Middleton, Wisconsin, thereby indirectly acquiring CBI Trust and Financial Services, Inc., Madison, Wisconsin.

Applicant has also applied to engage in trust company activities, pursuant to § 225.25(b)(3) of Regulation Y.

Board of Governors of the Federal Reserve System, March 27, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-7237 Filed 4-1-86; 8:45 am]

BILLING CODE 6210-01-M

First Coastal Banks, Inc., et al., Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 24, 1986.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *First Coastal Banks, Inc.*, Portsmouth, New Hampshire; to acquire 100 percent of the voting shares of Merchants National Bank, Dover, New Hampshire.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Citizens Bancshares of Waterville, Inc.*, Waterville, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens State Bank of Waterville, Waterville, Kansas.

1. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Valley-Hi Investment Company*, San Antonio, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Valley-Hi National Bank of San Antonio, San Antonio, Texas.

Board of Governors of the Federal Reserve System, March 27, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-7226 Filed 4-1-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of the Inspector General; Delegation of Authority To Issue Subpoenas

Notice is hereby given of delegation by the Inspector General to the Deputy Inspector General, the Assistant Inspectors General and their Deputies, and the Regional Inspectors General, of the authority vested in the Inspector General by section 205(a)(3) of Pub. L. 94-505 (42 U.S.C. 3525). Section 205(a)(3) authorizes the Inspector General to subpoena the production of all information, documents, reports, answers, records, accounts, papers and other data and documentary evidence necessary to carry out any investigation, audit or other proceeding authorized or directed under title II of Pub. L. 94-505.

The delegation prohibits redelegation.

The delegation superseded the prior delegation of authority to issue subpoenas published at 50 FR 890 (January 7, 1985).

The Inspector General has not limited his authority to issue subpoenas by this delegation.

The delegation is effective immediately upon publication of this notice in the **Federal Register.**

Dated: March 24, 1986.

John J. O'Shaughnessy,

Assistant Secretary for Management and Budget.

[FR Doc. 86-7244 Filed 4-1-86; 8:45 am]

BILLING CODE 4150-04-M

Statement of Organization, Functions, and Delegations of Authority; Correction

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), **Federal Register**, Vol. 51, No. 6, pg. 1042, dated Thursday, January 9, 1986) is amended to correct an administrative error. The functional statement for the Division of Provider Audits (DPA), Office of Financial Operations (OFO), Bureau of Program Operations (BPO), Office of the Associate Administrator for Operations (OAAO), was inadvertently deleted from the organization manual. The functional statement for the Division of Group Health Plans Operations (DGHPO), OFO, BPO, OAAO should have been deleted instead. The amendments below correct the error by deleting the functional statement for the DGHPO and restores the DPA functional statement.

The specific amendments to Part F. are described below:

—Section FP.20.A.4.d., Division of Group Health Plans Operations (FPA75), is deleted in its entirety and replaced by a new Section FP.20.A.4.d.

—The new Section FP.20.A.4.d., Division of Provider Audits (FPA76), reads as follows:

d. Division of Provider Audits (FPA76)

Establishes audit protocol, priorities, and procedures for all intermediaries to follow in utilizing their audit resources. Formulates specific audit guidelines for intermediaries. Prepares fiscal intermediaries' audit budget and return ratio requirements for provider audits to assure maximum return on expenditures. Analyzes health industry trends and develops audit profiles to address changing reimbursement issues. Determines the effects of the Prospective Payment System on applicable providers and the effects of the Tax Equity and Fiscal Responsibility Act on providers not affected by prospective payment. Establishes a strategy for future planning of audit activities. Plans, monitors, and reports on special audit projects (e.g., end stage renal disease, waiver State audits, skilled nursing facility prospective payment). Directs the Blue Cross and Blue Shield Association in their home office audit activities. Analyzes reimbursement and financial audit reports prepared by components both within and outside HCFA. Provides direction and maintains liaison with the Bureau of Quality Control and the Bureau of Eligibility, Reimbursement and Coverage on proposed provider reimbursement policy revisions, regulations, legislation and other program improvements.

Dated: March 7, 1986.

John R. Dyer,

Acting Associate Administrator for Management and Support Services.

[FR Doc. 86-7281 Filed 4-1-86; 8:45 am]

BILLING CODE 4120-03-M

Food and Drug Administration

[Docket No. 75N-0184; DESI 10837]

Milpath Tablets; Drugs for Human Use; Drug Efficacy Study Implementation; Withdrawal of Approval of New Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of the new drug application for Milpath Tablets containing a fixed-combination of tridihexethyl chloride and meprobamate. The basis for the withdrawal is that the product lacks substantial evidence of effectiveness. The product has been used to treat various gastrointestinal disorders.

EFFECTIVE DATE: May 2, 1986.

FOR FURTHER INFORMATION CONTACT: Douglas I. Ellsworth, Center for Drugs and Biologics (HFN-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8041.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 16, 1981 (46 FR 3977), the Director of the Bureau of Drugs (now the Center for Drugs and Biologics) evaluated fixed-combination drug products containing tridihexethyl chloride and meprobamate as lacking substantial evidence of effectiveness for their labeled indications. The Director also proposed to withdraw approval of the new drug applications for these products and offered an opportunity for a hearing on the proposal.

In response, a hearing request was submitted for the following product containing 25 milligrams (mg) of tridihexethyl chloride and 200 or 400 mg of meprobamate: Milpath-200 and -400 Tablets; NDA 11-043, held by Wallace Laboratories, Division of Carter-Wallace, Inc., Half Acre Rd., Cranberry, NJ 08512.

Subsequently, Carter-Wallace withdrew its hearing request. Accordingly, the Director of the Center for Drugs and Biologics is withdrawing approval of the new drug application for this product. The other products for which hearing requests were submitted are not affected by this notice (see 46 FR 36248).

The Director of the Center for Drugs and Biologics, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053 as amended (21 U.S.C. 355)), and under the authority delegated to him (21 CFR 5.82) finds that, on the basis of new information before him with respect to the product, evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evidence that the product will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

Therefore, pursuant to the foregoing finding, approval of NDA 11-043 and all amendments and supplements thereto is withdrawn effective Mar. 2, 1986. Shipment in interstate commerce of Milpath Tablets or any product that is not the subject of a pending hearing request will then be unlawful.

Dated: March 28, 1986.

Harry M. Meyer, Jr.,

Director, Center for Drugs and Biologics.

[FR Doc. 86-7256 Filed 3-28-86; 3:12 pm]

BILLING CODE 4160-01-M

[Docket No. 75N-0236; DESI 9418]

Pentaerythritol Tetranitrate in Combination with Meprobamate; Withdrawal of Approval

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of the new drug application (NDA) for Miltrate Tablets because the drug lacks substantial evidence of effectiveness in the treatment of angina pectoris.

EFFECTIVE DATE: May 2, 1986.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific product should be identified with DESI number 9418 and directed to the

Division of Drug Labeling Compliance (HFN-310), Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David T. Read, Center for Drugs and Biologics (HFN-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8041.

SUPPLEMENTARY INFORMATION: In a notice of opportunity for hearing published in the **Federal Register** of March 6, 1973 (38 FR 6090) (amended December 9, 1975 (40 FR 57378)), FDA reclassified Miltrate Tablets as lacking substantial evidence of effectiveness and proposed to withdraw approval of the new drug application. The amended proposal was based on the lack of evidence showing compliance with FDA's policy for combination drugs (21 CFR 300.50). In response, Carter-Wallace, Inc., requested a hearing and submitted supporting data for:

NDA 11-502; Miltrate Tablets containing 10 milligrams (mg) or 20 mg pentaerythritol tetranitrate and 200 mg meprobamate; Wallace Laboratories, Division of Carter-Wallace, Inc., Half Acre Rd., Cranbury, NJ 08512.

Carter-Wallace has since withdrawn its hearing request. Accordingly, FDA is now withdrawing approval of NDA 11-502 for Miltrate Tablets.

Any drug product that is identical, related, or similar to this product and is not the subject of an approved new drug application is covered by NDA 11-502 and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance at the address given above.

The Director of the Center for Drugs and Biologics, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053 as amended (21 U.S.C. 355)) and under the authority delegated to him (21 CFR 5.82) finds that, on the basis of new information before him with respect to the product, evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evidence that the product will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

Therefore, pursuant to the foregoing finding, approval of NDA 11-502 and all the amendments and supplements thereto is withdrawn effective May 2, 1986. Shipment in interstate commerce of the product above or any identical, related, or similar product that is not the subject of an approved new drug application will then be unlawful.

Dated: March 28, 1986.

Harry M. Meyer, Jr.,

Director, Center for Drugs and Biologics.

[FR Doc. 86-7057 Filed 3-28-86; 3:12 pm]

BILLING CODE 4160-01-M

[Docket No. 86D-0095]

Pesticides; Revocation of Action Levels for 1,2-Dibromo-3-Chloropropane

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of its action levels for residues of the cancelled pesticide 1,2-dibromo-3-chloropropane (DBCP) in or on raw agricultural commodities and in milk. FDA has taken this action in response to the Environmental Protection Agency's (EPA) revocation of its tolerances for DBCP (see the **Federal Register** of January 15, 1986 (51 FR 1790)), and to EPA's recommendation that FDA take similar action with respect to its action levels for DBCP.

ADDRESS: Written comments concerning the revocation of the action levels for DBCP, Compliance Policy Guide 7120.23, Attachment E, should be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Campbell, Center for Food Safety and Applied Nutrition (HFF-312), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0175.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 15, 1986 (51 FR 1790), EPA issued a final rule revoking the tolerances for inorganic bromides in or on various agricultural commodities grown in soil treated with 1,2-dibromo-3-chloropropane (DBCP). EPA revoked these tolerances because it had cancelled all the uses of DBCP. Because this pesticide is only moderately persistent in soil, EPA did not anticipate any problems from environmental contamination with DBCP residues.

EPA recommended in the preamble to its final rule and in a letter of January 6, 1986, from John A. Moore, EPA, to Joseph P. Hile, FDA, that FDA revoke the action levels that FDA had established for residues of DBCP in or on raw agricultural commodities (other than milk) and in milk. These action levels were listed in Compliance Policy Guide (CPG) 7120.23, Attachment E. FDA has decided to accept EPA's recommendation, has revoked the action levels for DBCP, and has deleted Attachment E of CPG 7120.23 from the CPG Manual.

FDA advises all interested parties that, as a result of the revocation of the action levels, food that contains DBCP residues that can be detected, measured, and confirmed may be considered for regulatory action.

Copies of the EPA correspondence that recommended this revocation and of the FDA memorandum to all FDA Regional and District Offices that initiated this action are on file in the Dockets Management Branch (address above) under the docket number found in brackets in the heading of this document.

Interested persons may submit written comments, data, and information regarding these action levels to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 26, 1986.

M.D. Kinslow,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-7225 Filed 4-1-86; 8:45 am]

BILLING CODE 4160-01-M

PUBLIC HEALTH SERVICE

National Committee on Vital and Health Statistics Subcommittee on Minority Health Statistics; Meeting

Pursuant to the Federal Advisory Act (Pub.L. 92-463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Minority Health Statistics established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, will convene on Friday, April 25 from 8:30 a.m. to 5:00 p.m. in Room 405-A of

the Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

The Subcommittee will hear presentations from experts bearing on the process used to revise the U.S. standard certificates of birth and death and on the pros and cons of alternate approaches to identify Hispanics in the proposed 1988 revision of the standard certificates. The Subcommittee will consider the implications for Hispanics of these data collection methods.

Further information regarding this meeting of the Subcommittee may be obtained by contacting Nancy D. Pearce, National Center for Health Statistics, Room 2–28, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436–7050.

Dated: March 25, 1986.

Manning Feinleib,

Director, National Center for Health Statistics.

[FR Doc. 86–7242 Filed 4–1–86; 8:45 am]

BILLING CODE 4160–17–M

National Committee on Vital and Health Statistics Subcommittee on Uniform Minimum Health Data Sets; Meeting

Pursuant to the Federal Advisory Act (Pub. L. 92–463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Uniform Minimum Health Data Sets established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, will convene on Thursday, April 24 and Friday, April 25, 1986 from 9:00 a.m. to 5:00 p.m. both days in Room 403A of the Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

The Subcommittee will examine the merits of recommending the inclusion or exclusion of individual items in the proposed long term care minimum data set.

Further information regarding the Committee may be obtained by contacting Henry S. Mount, National Center for Health Statistics, Room 2–28 Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436–7122.

Dated: March 25, 1986.

Manning Feinleib,

Director, National Center for Health Statistics.

[FR Doc. 86–7243 Filed 4–1–86; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N–86–1586; FR–2189]

Section 8 Set-Aside; Assistance for Chronically Mentally Ill Persons

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of funding availability.

SUMMARY: HUD intends to provide a special allocation of funds to be reserved during Fiscal Year 1986 for 1,000 Existing Housing Certificates authorized under section 8 of the United States Housing Act of 1937 (the Act). This funding for issuance of certificates shall be made available in order to support a program established by the Robert Wood Johnson Foundation that will benefit chronically mentally ill persons.

EFFECTIVE DATE: April 2, 1986.

FOR FURTHER INFORMATION CONTACT: Madeline Hastings, Room 6124, Existing Housing Division (202) 755–6887, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Background

On December 18, 1985 HUD and the Robert Wook Johnson Foundation of Princeton, N.J. (the Foundation), entered into a memorandum of understanding (the memorandum). The memorandum sets out policies and procedures that will govern a program designed by the Foundation and cosponsored by the National Governors' Association, the U.S. Conference of Mayors, and the National Association of Counties, to assist chronically mentally ill (CMI) persons in up to eight major cities. HUD has agreed to provide a special allocation of funds for Section 8 Housing Certificates to be used in connection with the Foundation's program in the cities selected.

The Foundation is an independent, national philanthropy that is interested in improving health care in the United States. The Foundation currently makes annual grants, of approximately 60 million dollars, to numerous health care institutions engaged in a wide variety of medical fields ranging from improving the survival and health of newly born infants to improving the quality of life for the elderly. A major focus of the Foundation is to improve access to medical services for people having serious difficulties obtaining care.

Under the terms of the memorandum, the Foundation will make grants of up to $20 million over a five-year period to applicants in the selected cities to assist in financing city-wide mental health structures and new service elements. The Foundation will also provide additional funds to be used for technical assistance to the grantees and for an evaluation of the program. The Foundation will establish an $8 million fund from which low interest rate loans for terms of up to ten years will be made to finance the purchase or rehabilitation, or both, of properties suitable for sheltering chronically mentally ill persons. It is expected that these grant and local funds will leverage substantial additional public and private investment.

Two key features of the Foundation's program are (1) the provision of a continuum of services and facilities that can serve needs that vary significantly from person to person as well as for the same person at different periods; and (2) the establishment or strengthening of a city-wide mental health service structure that would enable services to be centrally planned, coordinated, and integrated with other city services.

II. Application Review and Selection Process

The Foundation will select applicants in up to eight cities to participate in this program. The cities participating in the program will be among the 60 largest population centers in the United States. To be eligible for selection, each city must have a public housing agency (PHA) administering the Existing Housing Certificate Program that is willing to participate in the program, to target the special allocation of Section 8 certificates to the CMI population intended to be served by the program, and to enter into a "cooperation agreement" (described in section III below) with the local mental health agency (MHA) that is selected to receive a Foundation grant.

A grant application has been developed by the Foundation. It describes application procedures and requirements and criteria that will be used in the selection of applicants to participate in the program. (Although this document makes occasional reference to "cities" and "selected cities", applications will be submitted by MHAs, and the Foundation grants will be made to MHAs in the cities that participate). The Foundation has contacted all eligible cities and relevant

agencies to inform them about the program and how to obtain application packets. Completed applications are to be submitted to the Foundation by May 15, 1986. [Please note that applications are *not* to be submitted to HUD.]

The application indicates, among other things, tha nature and scope of evidence that must be included to demonstrate that the MHA is a qualified applicant (e.g., duly designated by the appropriate governmental body) and how the MHA and PHA will work together to achieve objectives of the program related to the use of Section 8 certificates.

An Advisory Committee has been established by the Foundation to carry out a number of activities related to this program. The Advisory Committee is composed of experts in mental health services, urban development, business and government, and will oversee the Program. It will review grant applications and the public housing agency's experience and capacity to administer the Section 8 program and will recommend to the Foundation's staff up to eight cities to receive grants. The Foundation's Board of Trustees will select the cities that are to receive grants.

The Foundation intends to complete its review of applications and to select grant recipients by mid-September of 1986. In August, 1986 HUD will notify PHAs in those cities recommended by the Foundation staff and from which the Foundation Board will make final selections of the need to submit Section 8 Existing Housing applications to their appropriate Field Office before September 1st. This procedure will enable HUD to process the PHA applications for FY 86 funding before the end of this fiscal year.

Finally, once the selection of the cities has been made, by the Foundation Board,the Advisory Committee also will provide technical assistance to, and monitor the progress of, the selected cities.

III. Program Guidelines

The memorandum establishes guidelines related to several aspects of the program, including (1) the manner in which Section 8 funds shall be allocated to PHAs and how the funds may be used by participating PHAs; and (2) how persons will be determined to be eligible CMI participants in the program.

A participating PHA's allocation of section 8 funds will be for an amount determined by HUD based on the number of certificates recommended by the Foundation. In connection with this special allocation, the PHA will need to amend its administrative plan to provide for the number of certificates received as a part of this initiative, and to address advertising the availability of certificates and opening its waiting lists for CMI persons.

A PHA shall be permitted to use the certificates for purposes outside the CMI Program, *provided that* a comparable number of section 8 units received by the PHA other than through the special allocation will be available to the program. In such event, the equivalent number of units that it must make available to CMI persons may be provided by the PHA from either its Existing Housing or Moderate Rehabilitation program, as long as the units provided are appropriate for use by CMI persons. Finally, in order to maximize the benefits available under this program, each PHA should use its best efforts to maintain at least the same number of section 8 certificates provided in the special allocation for CMI persons throughout the term of the annual contributions contract.

HUD will take whatever steps are necessary, within its authority, to assure that an amount equal to the amount of the special allocation will remain available to the program for a minimum of five years. Also, HUD intends to provide an extension, for an additional five years, if (1) the section 8 Existing Housing Certificate Program has not been terminated by the Congress; (2) there is a continued need; (3) the Foundation continues to provide or to have outstanding financial assistance; and (4) such extension complies with the Department's regulations in effect at the time. Any provision of assistance is, of course, subject to budget and contract authority provided by the Congress.

PHAs and MHAs will work together throughout the course of the program to achieve program objectives. In each selected city, the PHA and MHA shall enter into a cooperation agreement under which they shall agree upon criteria for determining whether applicants for section 8 certificates qualify as CMI persons, consistent with section 3(b)(3) of the Act, which will allow a PHA to rely on a certification from the MHA that an applicant is eligible to participate. The MHA will be responsible for identifying the social service and medical needs of CMI persons, and for determining whether an applicant qualifies as an eligible CMI participant. MHAs will assist in trying to locate housing for CMI persons that is proximate to mental health facilities, and that provides supervision appropriate to the needs of CMI persons.

The PHA will (a) determine the eligibility of CMI persons specifically for section 8 assistance; (b) verify family income and ascertain the extent to which rent subsidy may be required; (c) determine whether any proposed housing unit meets section 8 requirements; and (d) make housing assistance payments on behalf of CMI persons in the program. Except as expressly modified by this notice of funding availability, the regulations in Subparts A and B of 24 CFR Part 882 applies to the provision of housing assistance payments for CMI persons receiving section 8 certificates under this initiative.

Finally, the memorandum indicates that CMI persons selected for participation in the program who need the care and supervision offered in certain types of housing facilities and those who need health services provided under the program will be permitted to select from the broadest possible range of housing accessible to such services, subject to the section 8 Housing Quality Standards, fair market rent and rent reasonableness limitations, and other section 8 program requirements. However, the PHA and MHA may limit the CMI participant's initial choice of housing to provide supervision or services suitable to the CMI persons' needs. The MHA and PHA will cooperate in determining the appropriate range of housing choices for each participating CMI person.

In accordance with 24 CFR 50.20(d), this notice is not subject to the environmental assessment requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4332.

Authority: Secs. 3, 5 and 8 of the United States Housing Act of 1937 (42 U.S.C. 1437a, c and f).

Dated: March 27, 1986.

Silvio J. DeBartolomeis,

Acting General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commission.

[FR Doc. 86-7279 Filed 4-1-86; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

President's Commission on Americans Outdoors; Concept Paper Solicitation

The President's Commission on Americans Outdoors is soliciting "concept papers" which are short papers that outline innovative and successful ideas in the field of recreation. These ideas will be studied and evaluated by the Commissioners as they develop recommendations for a

new national recreation policy to be presented in a report to the President in December 1986.

The concept paper is one of several vehicles being used by the Commission to gather information on the state of recreation across the country; on what Americans like to do outdoors; and on how to ensure that there will be ample opportunities to do these things over the next 20 years.

The Commission is asking that a specific format be followed when submitting a concept paper. To get a copy of the concept paper format please call Joyce Kelly, Associate Director for Outreach and Special Projects at 202/234–4609 or Rodger Schmitt, Deputy Associate Director for Federal Lands and Water Programs at 202/634–7342 or write to either of them at the following address: PCAO, 1111 20th St., NW., P.O. Box 18547, Washington, DC 20036.

Concept papers must be received by May 15, 1986.

Dated: March 27, 1986.

Victor H. Ashe,

Executive Director, President's Commission on Americans Outdoors.

[FR Doc. 86–7254 Filed 4–1–86; 8:45 am]

BILLING CODE 4310–70–M

President's Commission on Americans Outdoors; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the President's Commission on Americans Outdoors (Commission) will be held Friday, April 25, and Saturday, April 26, 1986, from 8:30 AM until 12:00 Noon, both days. The meeting of the Commission will be held in the Tremont Environmental Education Center of the Great Smoky Mountains National Park, Gatlinburg, Tennessee 37738.

This will be a business meeting of the Commission to assess the work of the Commission and Staff during the first several months of its efforts to provide a Recreation Policy for the county into the next century. This meeting is opened to the public, interested persons may attend. The Commission contact is Mr. James R. Gasser, and he may be contacted at the President's Commission on Americans Outdoors, P.O. Box 18547, 1111–20th Street, NW, Washington, DC 20036–8547, (202) 634–7310.

Dated: March 27, 1986.

Victor H. Ashe,

Executive Director, President's Commission on American Outdoors.

[FR Doc. 86–7255 Filed 4–1–86; 8:45 am]

BILLING CODE 4310–70–M

Bureau of Indian Affairs

Plan for the Use and Distribution of the Fort Mojave Indian Tribe's Judgment Funds in Docket 10–84L Before the United States Claims Court

March 24, 1986.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

The Act of October 19, 1973 (Pub. L. 93–134, 87 Stat. 466) as amended, requires that a plan be prepared and submitted to Congress for the use and distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on October 23, 1984, in satisfaction of the award granted to the Fort Mojave Indian Tribe before the United States Claims Court in Docket 10–84L. The plan for the use and distribution of the funds was submitted to the Congress with a letter dated October 7, 1985 and was received (as recorded in the Congressional Record) by the Senate on October 24, 1985, and by the House of Representatives on October 21, 1985. The plan became effective on February 3, 1986 as provided by the 1973 Act, as amended by Pub. L. 97–458, since a joint resolution disapproving it was not enacted. The plan reads as follows:

For the Use of the Judgment Funds of the Fort Mojave Indian Tribe in Docket 10–84L Before the United States Claims Court

The funds appropriated on October 23, 1984 in satisfaction of the award granted to the Fort Mojave Indian Tribe in Docket 10–84L before the United States Claims Court, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be used as follows:

All funds will be held in a reserve fund to be expended by the Fort Mojave Indian Tribe for essential tribal governmental programs. These programs shall include education and all other tribal programs as outlined in the tribal budget. Funds will be administered under the tribal budgetary system as approved by the Secretary. Should the funds in any of the above-cited categories be determined to be in excess of needs, the tribal governing body, on a budgetary basis, may make appropriate adjustments as necessary, subject to the approval of the Secretary.

General Provisions

None of the funds distributed per capita or made available under this plan for programing shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources, nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for per capita shares in excess of $2,000, any Federal or federally assisted programs.

Ronald L. Esquerra,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 7212 Filed 4–1–86; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

Oregon; Final Designation of Upper and Lower Table Rocks and King Mountain Rock Garden as Areas of Critical Environmental Concern

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of final designation of two special areas as areas of critical environmental concern (ACECs): Upper and Lower Table Rocks and King Mountain Rock Garden.

SUMMARY: Pursuant to the authority in the Federal Land Policy and Management Act of October 21, 1976 (section 202(c)(3)) and 43 CFR Part 1610, this is the final decision concerning the designation of Upper and Lower Table Rocks and King Mountain Rock Garden as ACECs. This documents the final decisions reached by the Bureau of Land Management (BLM) for managing four potential areas of critical environmental concern in the Medford District. Major decisions are to:

Designate 1,240 acres as the Upper and Lower Table Rocks Area of Critical Environmental Concern, and the Upper Table Rock as an Outstanding Natural Area,

Designate 90 acres as the King Mountain Area of Critical Environmental Concern,

Continue to manage the Woodcock Bog as a Research Natural Area, but not as an area of critical environmental concern, and

Continue to manage the south portion of the Foots Creek area to protect the Great Gray Owl and a plant specie which is on the State of Oregon rare listing but no longer a candidate for federal listing as a threatened or endangered specie, but not designate the area an area of critical environmental concern.

Only three comments were received on the proposed decision of September

26, 1984. All three were protests and were reviewed and denied by the Director of the BLM. The Governor of Oregon identified no inconsistencies with State or local plans, programs, or policies and recommended no changes in the proposed plan amendments.

The preferred alternative of the Josephine and Jackson/Klamath Management Framework Plan Amendment of June 15, 1984, is the final decision with the following modifications:

The 15 acres of high intensity timber management lands within the King Mountain Rock Garden will be eliminated from the allowable cut base and will be managed to protect the non-timber resources of the area. The Josephine Sustained Yield Unit Allowable Cut Level will be adjusted during the next planning cycle.

Protection of wetlands in the Woodcock Bog Research Natural Area will be managed in accordance with Executive Order 11990.

This document meets the requirement for agency decision making as provided in 40 CFR Part 1505.

The Josephine and Jackson-Klamath Management Framework Plans (MFPs) for the Bureau of Land Management (BLM) Medford District were completed in 1979 and 1980 respectively. These land use plans did not include decisions regarding the designation of areas of critical environmental concern (ACECs). The BLM decided to amend these land use plans to address ACEC designation. In 1981, the BLM Medford District requested nominations for ACECs, resulting in 15 areas being nominated for consideration. This plan amendment addresses the four areas which were identified in the June 15, 1984, plan amendment and environmental assessment (EA) for ACECs as areas meeting the criteria of eligibility for ACEC designation set forth in 43 CFR 1610.7–2(a). The four potential ACECs analyzed were: Woodcock Bog, Upper and Lower Table Rocks, King Mountain Rock Garden, and Foots Creek (South Portion).

The Bureau of Land Management (BLM) decision is to designate Upper and Lower Table Rocks and King Mountain Rock Garden as ACECs. Upper Table Rock will also be managed as an Outstanding Natural Area. Woodcock Bog will not be designated an ACEC, but will continue to be managed as a Research Natural Area. The Foots Creek area will not be designated an ACEC, but the plant monitoring program for the Lady Slipper Orchid will be continued.

SUPPLEMENTARY INFORMATION:

Upper and Lower Table Rocks

1,240 acres of BLM administered land in T. 35 S., R. 2 W., Secs. 34 and 35, T. 36 S., R. 2 W., Secs. 1 and 9, W.M., Jackson County, Oregon.

The decision is to designate 1,240 acres an area of critical environmental concern. The BLM-administered land on the Upper Table Rock is hereby designated an Outstanding Natural Area. The primary objective of designating and managing the proposed outstanding natural area will be to provide outdoor recreation use of the area while preserving the resource in its natural condition. General management objectives for both Table Rocks will be: To preserve them as examples of major ecosystem types and outstanding biological phenomena (vernal pools and patterned ground vegetation); to provide research and educational opportunities for scientists and others in the observation, study, and monitoring of the natural area; and to help preserve a full range of genetic diversity for all proposed threatened or endangered fauna and flora. The following are specific management requirements which will protect and prevent damage to plants, geologic formations and scenic values.

1. Prior to withdrawal, mining operations (except casual use) will be regulated pursuant to surface management regulations (43 CFR 3809), requiring an approved plan before beginning of operations. Issuance of leases and permits for leasable and saleable minerals will be discretionary upon environmental review.

2. Withdrawal from locatable mineral entry will be pursued. Any existing mining claims will be examined for validity. Valid mining claims will be regulated similar to management requirement No. 1.

3. The acquisition of 960 acres of private land, including the mineral estate, in Section 2 and the E½ of Section 3 on Upper Table Rock will be pursued. This action will protect and enhance recreational and visual values on government lands in Section 1, T. 36 S., R. 2 W., and Sections 34 and 35, T. 35 S., R. 2 W., Willamette Meridian.

4. Additional trail maintenance will reduce erosion. Surfacing will be placed on the existing trails to protect resource values.

5. Interpretive signing will be provided to increase awareness and aid in resource value protection.

6. The use of tractors and other heavy equipment will be limited in the suppression of wild fires. An agreement will be pursued with the Oregon State Forestry Department for extra fire protection which emphasizes retardant drops and hand fireline construction.

7. Livestock grazing will be permitted as a management tool to improve native plant presence. Grazing management may be revised if monitoring determines that specific objectives for enhancement of native vegetation are not being achieved.

8. The existing airstrip on the Lower Table Rock may be used as long as BLM monitoring of the use indicates that it does not materially interfere with BLM management objectives and the integrity of the ACEC. No improvements beyond those necessary to meet the minimum safety standards of such an airstrip will be required. The minimum improvement to the airstrip will consist of a warning sign identifying the airstrip and its use, a wind-sock, and annual mowing of vegetation on the airstrip. No steps will be taken to change the present drainage patterns.

9. Timber harvesting, firewood cutting, cone picking, and other vegetation removal will not be permitted.

10. Camping and campfires will not be permitted.

11. A parking area will be evaluated for the Upper Table Rock trailhead on BLM-administered land. The need to eliminate the existing hazard caused by the public crossing a busy county road will be analyzed in relation to resource degradation expected from increased visitor use.

12. Visitor use will be monitored and, if necessary, controlled to prevent resource degradation. Additional trail construction will depend on the ability to protect important and relevant resource values.

King Mountain Rock Garden

90 acres of BLM administered land in T. 33 S., R. 5 W., Sec. 13, W.M., Josephine and Douglas Counties, Oregon

The decision is to designate 90 acres (see alternative 2 on page 21 of the document entitled "Plan Amendment and Environmental Assessment for Areas of Critical Environmental Concern") as the King Mountain Rock Garden area of critical environmental concern for the purpose of providing protection to the area's special high elevation, serpentine habitat.

The following are specific management requirements:

1. Road signs will be posted to deter off-road vehicle (ORV) and ground-disturbing activities with potential for resource degradation.

2. Withdrawal from locatable mineral entry within the 90-acre area will be pursued. Existing mining claims will then be examined for validity. Valid

mining claims will be regulated pursuant to management requirement No. 3.

3. Prior to withdrawal, mining operations (except casual use) will be regulated pursuant to surface management regulations (43 CFR Part 3809), requiring an approved plan of operations. Issuance of leases and permits for leasable and saleable minerals will be discretionary upon environmental review.

4. Construction of access roads and quarrying will be prohibited within the area.

5. A management for the area will be developed with the goal of managing recreation use in conjunction with the management of the sensitive plant species.

6. Trails will be designated when and if the level of visitor use has potential for significant damage to ACEC resources values.

7. Off-road vehicle use that may adversely impact ACEC resource values will be restricted.

8. Timber harvest will be eliminated on 15 acres classified for high intensity timber management and the acreage will be removed from the allowable cut base acreage. This 15 acres was originally to have four acres managed according to intensive forest management practices and 11 acres limited to salvage logging. The Josephine sustained yield unit allowable cut will be adjusted during the next planning cycle.

Woodcock Bog and Foots Creek (South Portion)

Woodcock Bog will not be designated as an ACEC as the flora values are adequately protected under a research natural area designation. The area will continue to be used for research and education activities with such uses being limited to those of a non-destructive nature, i.e., those that do not impair or alter the bog's environment.

The Foots Creek (South Portion) drainage will not be designated an ACEC. The on-going *Cypripedium montanum* monitoring plan will be continued. This ten-year plan will monitor a control unit, shelterwood unit, and clearcut/spray unit to determine some ecological factors on the plant's life history. Although the formal monitoring program for the Great Gray Owl will not be continued, protection will be provided through normal procedures of inventory, identification, and undisturbed buffer protection. The Great Gray Owl and the Lady Slipper Orchid are adequately protected along with other resource values provided for under existing management terms and conditions.

Reading Copies

Public reading copies of the final designations will be available for review at the following locations:

Klamath County Library, Klamath Falls, Oregon
Josephine County Library, Grants Pass, Oregon
Coos County Library, Coquille, Oregon
Curry County Library, Gold Beach, Oregon
Douglas County Library, Roseburg, Oregon
Jackson County Library, Medford, Oregon
Rogue Community County Library, Grants Pass, Oregon
Library, Southern Oregon State College, Ashland, Oregon
Library, Oregon Institute of Technology, Klamath Falls, Oregon
Bureau of Land Management, Office of Public Affairs, 825 NE. Multnomah Street, Portland, Oregon
Bureau of Land Management, Medford District Office, 3040 Biddle Road, Medford, Oregon
Library, University of Oregon, Eugene, Oregon
Library, Portland State University, 727 SW. Harrison, Portland, Oregon
Library, Oregon State University, Corvallis, Oregon

A limited number of copies of the final decisions are available upon request to the BLM Medford District Office.

Questions

Questions on specific management plans, research opportunities or development/protection plan should be addressed to: District Manager, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504.

Dated: March 25, 1986.

Hugh Shera,

District Manager.

[FR Doc. 86-7213 Filed 4-1-86; 8:45 am]

BILLING CODE 4310-33-M

BLM Utah Statewide Wilderness Draft Environmental Impact Statement

AGENCY: Bureau of Land Management (BLM) Interior.

ACTION: Extension of Public Review Period and Errata for the Utah BLM Wilderness Draft Environmental Impact Statement (EIS).

SUMMARY: As a result of requests from the public and several agencies, the end of the comment period formally is changed to August 15, 1986. Items as listed below are officially corrected by the errata notification.

Public Comment Period

The originally announced period for public review and comment allowed about four and one-half months for submission of written comments regarding the Wilderness Draft EIS. Due to the size and complexity of the document, BLM now is receptive to the several requests for an extension of the comment period from the original ending date of June 15, 1986 to a new ending date of August 15, 1986. Further extensions will not be considered except under very special circumstances. To be included as part of the final EIS, all written comments must be postmarked or hand delivered to the BLM Utah State Office no later than August 15, 1986. The public hearings previously announced will be held in May 1986 as listed in the Wilderness Draft EIS, and they will not be rescheduled as a result of the extension of the comment period.

Several reviewers have asked about the rationale for the BLM proposed action.

The Statewide Wilderness Draft EIS does NOT contain specific rationale for the proposed action, although in many cases it can be deduced from the analysis. Lack of specific rationale was NOT an oversight, but an intentional action in compliance with the National Environmental Policy Act (NEPA) and subsequent regulations, policies, and practices.

Section 1502.2(g) of NEPA states that the "environmental impact statement shall serve as a means of assessing the environmental impact of proposed agency actions, rather than justifying decisions . . .". Section 1502.14(e) states that the description of the alternatives should "identify the agency's preferred alternative or alternatives if one or more exists. . .". Paragraph (b) of the same section requires that the EIS "devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits." Taken together, this means that the EIS should analyze the impacts of the alternatives in order that reviewers may ascertain comparative differences, but it should not provide justification for the proposed action. Impact summary tables in the EIS provide the comparative information.

It is important to note that on many occasions since NEPA has been in effect the point has been made that an EIS is not a decision document. It purely is an analysis of environmental impacts and a public involvement process in furtherance of that analysis. An essential and required practice is for a separate decision document to be prepared at the conclusion of the EIS process. This decision document may reflect environmental information, as well as many other factors that contribute to decision-making. The Wilderness Study Reports that will be

prepared to accompany the final EIS will comprise the separate decision documents insofar as the final BLM wilderness recommendations are concerned.

Errata

Since publication of the wilderness Draft EIS several errors have been noted. They do not change the basic data, analysis, or findings of the EIS as they are primarily of a typesetting or editorial nature; however, they can lead to confusion of the reader. Consequently, they are corrected as follows:

Volume I

Page 22, Table 4 and subsequent locations—change the WSA (#48) name from Fish Spring Canyon to Fish Creek Canyon.

Page 31, Column 1, Paragraph 2, Line 5; Page 33, Column 1, Paragraph 6, Lines 7 and 8; Page 44, Column 1, line 1; Page 47, Column 1, Paragraph 2, Lines 13 and 14—change "BLM land use plans" to "withdrawals."

Page 132, Table 69—change title to read Alternative 3, and change Percent of Total County Acreage to 12.0 for Wayne County.

Pages 282 and 283, Table 1—change column headings "Private" to State and "State" to Private.

Pocket Map 4, Legend—change the colored area label to "Areas Included in the Paramount Wilderness Quality Alternative."

Volumes II–VI—General Corrections

1. Any inconsistencies in the alternatives labeled as BLM Proposed Action should be resolved by reference to WSA Tables 4 and 10 in Volume I.

2. Any discrepancies in reported State sections proposed for exchange should be resolved by reference to Appendix 3 in Volume 1.

Volume II

Deep Creek Mountains WSA

P. 11, Map 3, Partial Wilderness Alternative—the map should show setbacks in the partial wilderness boundary in three additional locations as follows:

About on-quarter mile near Trough Springs, including portions of Sections 5, 8, 17 and 18 in T 13 S, R 18 W; one-quarter to one-half mile set back of the boundary in Sections 11 and 14 of T 12 S, R 18 W; and one-eighth to one-half mile set back of the boundary in Sections 18 and 19 of T 11 S, R 18 W. (These three areas are generally shown on Pocket Map 1 in Volume 1.)

Swasey Mountain WSA

P. 2, second column, fifth paragraph—add there is no "commercial" harvest of forest products.

P. 28, first column, Mineral and Energy Resources, Paragraph 2—"2680 pre-FLPMA oil and gas leases" should read 2680 *"acres of"* pre-FLPMA oil and gas leases.

Notch Peak

Page 14, Table 1 (continued)—add label (Proposed action) to column heading for large Partial Wilderness Designation.

Volume III—Part A

Red Mountain

Pages 11 and 12, Table 1—change label (Proposed Action) from No Action column to Partial Wilderness Designation column.

Cottonwood Canyon

Page 10, Table 1, Water Resources, Partial Wilderness Column—change the words "All Wilderness" to "No Action Alternative."

P. 26, Column 2, Paragraph 6, Water Resources—change "18,000" to "84,000."

LaVerkin Creek Canyon

Page i—add label (Proposed Action) to the All Wilderness Alternative in two places in the Table of Contents.

Orderville Canyon

Page i—change label (Proposed Action) from No Action Alternative to All Wilderness Alternative under ENVIRONMENTAL CONSEQUENCES OF ALTERNATIVES.

Page 10, Column 1, Mineral and Energy Resources, Paragraph 4—insert the following at the beginning of the paragraph: "The Strategic and Critical Materials Stock Policy Act as amended, provides that strategic and critical materials be identified and stockpiled in the"

Page 16—delete label (Proposed Action).

Page 19—add label (Proposed Action) to the heading All Wilderness Alternative.

Parunuweap Canyon

Page i—change label (Proposed Action) from All Wilderness Alternative to the first Partial Wilderness Alternative under DESCRIPTION OF ALTERNATIVES and ENVIRONMENTAL CONSEQUENCES OF ALTERNATIVES.

Pages 4 and 30—delete label (Proposed Action)

Pages 6 and 34—add label (Proposed action) to the heading Partial Wilderness Alternative.

Pages 12, 13, and 14; Table 1—change label (Proposed Action) from All Wilderness column to large Partial Wilderness column.

Moquith Mountain

Page i—add label (Proposed Action) to the No Action Alternative under DESCRIPTION OF ALTERNATIVES and ENVIRONMENTAL CONSEQUENCES OF ALTERNATIVES.

Page 3, Map 1—add a 40 acre parcel of private land in the NW ¼ of the NW ¼; Section 3, T 44 S, R 7 W.

Page 15, Column 1, Paragraph 3—delete "There are no rights of way in the WSA." Add—there are about .5 miles of water pipeline rights-of-way in the WSA, held by the Fredonia-Arizona Water Conservation District.

Page 22, Column 2, Paragraph 1, Line 4—insert "not" between would complement.

Mud Spring Canyon

Page 8, Table 1 (continued)—add label (Proposed Action) to the No Action Column.

Paria Hackberry

Page 10, Column 2, Paragraph 1, line 5—insert to the end of sentence 3, "except for the Paria River Bed."

Page 11, Map 3—Paria River Bed should be shown as cherry-stemmed.

Volume III—Part B

Wah Weap

Page 22, Table 3—change 300 "million" cubic feet of natural gas to 300 "billion".

The Watchman

Page i—add label (Proposed Action) to the All Wilderness Alternative under DESCRIPTION OF ALTERNATIVES.

Beartrap Canyon

Page i—same addition as noted above for the Watchman WSA.

Volume IV

Mt. Ellen—Blue Hills

Page i—add label (Proposed Action) to the Partial Wilderness Alternative under DESCRIPTION OF ALTERNATIVES AND ENVIRONMENTAL CONSEQUENCES OF ALTERNATIVES.

Page 14, Table 1 (continued)—add label (Proposed Action) to column heading for Partial Wilderness Designation.

Horseshoe Canyon South

Page 6, Column 2, 6 lines from bottom—change "1070" to "80."

Page 7, map 3, Legend—change "36,600" to "36,000."

Page 9, Column 1, Paragraph 2, 6 lines from bottom—change "1280" to "1920."

French Spring—Happy Canyon

Page i—change label (Proposed Action) from Partial Wilderness Alternative to the No Action Alternative under DESCRIPTION OF ALTERNATIVES and ENVIRONMENTAL CONSEQUENCES OF ALTERNATIVES.

Pages 2 and 22—add label (Proposed Action) to the heading No Action Alternative.

Pages 6 and 30—delete label (Proposed Action).

Page 11, Table 1, No Action Column, Geology—Change "22,240" to "22,480" and Vegetation—change "7170" to "9170."

Pages 11–13, Table 1—change label (Proposed Action) from Partial Wilderness Designation column to No Action Column.

Page 22, Column 2, last paragraph, sixth line from bottom—change "7170" to "9170."

Fiddler Butte

Page 16, Table 1, Column 5, Paragraph 1—change "40,400" to "46,100."

Page 19, Table 5, Tar Sand—change 500 "billion" to 500 "million" and footnote 3, change "100 billion" to 1.26 billion."

Page 21, Column 1, Paragraph, 3—change 20 "acre-feet/acre/year" to 20 "cubic-feet/acre/year."

Mt. Pennell

Page i—change label (Proposed Action) from Partial Wilderness Alternative to the No Action Alternative under DESCRIPTION OF ALTERNATIVES and ENVIRONMENTAL CONSEQUENCES OF ALTERNATIVES.

Pages 2 and 22—add label (Proposed Action) to the heading No Action Alternative.

Pages 8 and 29—delete label (Proposed Action).

Pages 12–13, Table 1—change label (Proposed Action) from Partial Wilderness Designation column to No Action column.

Volume V

Grand Gulch ISA Complex

Pages 4, 7 and 9, Maps 1, 2 and 3—add cherry-stemmed road originating from cherry-stemmed road in the NW ¼ of Section 16, T. 39 S., R. 17 E. and proceeding northwest through Section 7 and then north along the western boundary of Seciton of 6 terminating at the northwest corner of that section in the same township. Also add a .5 mile cherry-stemmed road originating in the southwest corner of Section 15, T. 39 S., R. 16 E. and proceeding northwest to a point about ¼ mile south of the center of the section.

Dark Canyon Complex

Page i—change label (Proposed Action) from the No Action Alternative to the All Wilderness Alternative under DESCRIPTION OF ALTERNATIVES and ENVIRONMENTAL CONSEQUENCES OF ALTERNATIVES.

Horseshoe Canyon (North)

Page i—same changes as noted above the Dark Canyon complex.

Page 7, Table 1—add label (Proposed Action) to the All Wilderness Column.

Volume VI

Mexican Mountain

Page 9, Map 3, Legen—change Alternative WSA Boundary to a dashed line and Partial Wilderness Alternative to a solid line. Also change boundary of Partial Alternative to follow contour line north to WSA boundary along the east side of the ridge in Sections 17, 10 and 29, T 20 S, R 12 E.

Floy Canyon

Page i—delete label (Proposed Action) for No Action Alternative under ENVIRONMENTAL CONSEQUENCES OF ALTERNATIVES.

Coal Canyon

Page i—change page 6 to page 4 for No Action Alternative under DESCRIPTION OF THE ALTERNATIVES.

CONTACT PERSON: Dr. Gregory F. Thayn, Telephone (801) 524–3135, Wilderness Studies (U–933), Bureau of Land Management, Utah State Office, 324 South State Street, Suite 301, Salt Lake City, Utah 84111–2303.

Dated: March 25, 1986.

James A. Moorhouse,

Acting State Director.

[FR Doc. 86–7114 Filed 4–1–86; 8:45 am]

BILLING CODE 4310-DQ-M

[CA–17695]

Exchange of Lands; California

AGENCY: Bureau of Land Management, Interior.

ACTION: CA–17695, Modification of Notice of Realty Action; Exchange of Public Lands in San Diego County, California.

SUMMARY: This document modifies an Amended Notice of Realty Action published in the **Federal Register** on January 30, 1986 (51 FR 3850). The amended notice concerned an exchange of public land in San Diego County and Riverside County, California, as originally described in a Notice of Realty Action published in the **Federal Register** on December 27, 1985 (50 FR 53021–22).

The original and amended notices of December 27, 1985 and January 30, 1986 are hereby modified to temporarily suspend action on the following public lands to allow further study based on comments received:

San Bernardino Meridian, California

T. 17 S., R. 1 E.,
Sec. 20: NE¼, N½SE¼, SE¼SE¼;
Sec. 21: N½, N½S½.
Sec. 29: W½SE¼.
Containing 840 acres.

The Bureau of Land Management will proceed with completion of the exchange on the remaining public lands where no comments were received.

FOR FURTHER INFORMATION CONTACT: Peter Humm or Jacqueline Granstôn. Susanville District Office, 705 Hall St., Susanville, CA 96130 at (916) 257–5381.

Dated: March 24, 1986.

Bruce P. Conrad,

Deputy State Director, Division of Operations.

[FR Doc. 86–7270 Filed 4–1–86; 8:45 am]

BILLING CODE 4310-40-M

Colorado; Filing of Plats of Survey

March 24, 1986.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 A.M., March 24, 1986.

The plat representing the dependent resurvey of a portion of the south and north boundaries, the subdivisional lines, and the survey of the subdivision of certain sections, T. 9 S., R. 94 W., Sixth Principal Meridian, Colorado, Group No. 749, was accepted March 14, 1986.

The plat representing the dependent resurvey of a portion of the

subdivisional lines and the survey of the subdivision of section 14, T. 9 S., R. 95 W., Sixth Principal Meridian, Colorado, Group No. 749, was accepted March 14, 1986.

These surveys were executed to meet certain administrative needs of this Bureau.

The plat representing the dependent resurvey of a portion of the east boundary and subdivisional lines, T. 42 N., R. 9 E., New Mexico Principal Meridian, Colorado, Group No. 716, was accepted March 11, 1986.

The plat representing the dependent resurvey of a portion of the south boundary and subdivisional lines, T. 43 N., R. 9 E., New Mexico Principal Meridian, Colorado, Group No. 716, was accepted March 11, 1986.

The plat representing the dependent resurvey of a portion of the subdivisional lines, T. 42 N., R. 10 E., New Mexico Principal Meridian, Colorado, Group No. 716, was accepted March 11, 1986.

These surveys were executed to meet certain administrative needs of the Bureau of Reclamation.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2020 Arapahoe Street, Denver, Colorado 80205.

Jack A. Eaves,

Acting Chief, Cadastral Surveyor for Colorado.

[FR Doc. 86-7221 Filed 4-1-86; 8:45 am]

BILLING CODE 4310-84-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Senior Executive Service; Performance Review Board Membership

March 24, 1986.

On or about March 24, 1986, the following persons will be added as members to the Performance Review Board:

Lois E. Hartman
Donal G. MacDonald
Joseph S. Toner

Jan Barrow,

Executive Secretary, Performance Review Board, Agency for International Development.

[FR Doc. 86-7216 Filed 4-1-86; 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-300 (Final)]

Dynamic Random Access Memory Semiconductors (DRAM's) of 256 Kilobits and Above From Japan

AGENCY: International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-300 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of dymanic random access memory semiconductors (DRAM's) having a memory capacity of 256 kilobits and above, of both the N-channel and the complementary metal oxide semiconductor type, whether in the form of processed wafers, unmounted die, mounted die, or assembled devices, provided for in item 687.74 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in a preliminary determination, to be, or likely to be, sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before May 27, 1986 and the Commission intends to make its final injury determination by June 13, 1986 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))). This investigation will be conducted concurrently with investigation No. 731-TA-270 (Final), which concerns 64 kilobit DRAM's. There will be a single consolidated hearing for both investigations.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: March 14, 1986.

FOR FURTHER INFORMATION CONTACT: Ilene Hersher (202-523-4616), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of DRAM's of 256 kilobits and above from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was self-initiated by Commerce on December 17, 1986 (50 FR 51450). In response to that self-initiation, the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured, or threatened with material injury, by reason of imports of the subject merchandise (51 FR 4661, Feb. 6, 1986).

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3) each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report.—A public version of the prehearing staff report in this investigation will be placed in the public record on April 15, 1986, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m., on April 30, 1986 at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on April 11, 1986. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on April 15, 1986 in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is April 15, 1986.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on May 30, 1986. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before May 30, 1986.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority

This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: March 26, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-7315 Filed 4-1-86; 8:45 am]

BILLING CODE 7020-02-M

Report to the President on Investigation No. TA-201-57 Electric Shavers and Parts Thereof

March 27, 1986.

Determination

On the basis of the information developed in the course of investigation No. TA-201-57, the Commission has determined that electric shavers and parts therof, provided for in items 650.77 and 683.50 of the Tariff Schedules of the United States (TSUS), are not being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing articles like or directly competitive with the imported articles.

Background

On October 8, 1985, the United States International Trade Commission instituted investigation No. TA-201-57, under section 201(b)(1) of the Trade Act of 1974 (19 U.S.C. 2251(b)(1)), in order to determine whether electric shavers and parts thereof are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing articles like or directly competitive with the imported articles. The investigation was instituted following the receipt of a petition for import relief filed on behalf of Remington Products, Inc., a domestic producer of electric shavers.

Notice of the Institution of the Commission's investigation, the scheduling of a public hearing held in connection therewith, and expansion of the scope of investigation was given by posting copies of the notices in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notices in the **Federal Register** of October 23, 1985 (50 FR 43009) and December 4, 1985 (50 FR 49776). The hearing was held in Washington, DC on January 14-15, 1986, at which time all persons were afforded the opportunity to appear in person, present evidence, and be heard.

The report is being furnished to the President in accordance with section 201(d)(1) of the Trade Act. The information in the report was obtained from fieldwork and interviews by members of the Commission's staff, and from information obtained from other Federal agencies, responses to Commission questionnaires, information presented at the public hearing, briefs submitted by interested parties, the Commission's files, and other sources.

The Commission transmitted its determination in this investigation to the President on March 27, 1986. The views of the Commission are contained in USITC Publication 1819 (March 1986), entitled "Electric Shavers and Parts Thereof: Report to the President in Investigation No. TA-201-57 Under Section 201 of the Trade Act of 1974."

By order of the Commission.

Issued: March 27, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-7320 Filed 4-1-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-288 (Final)]

Erasable Programmable Read Only Memories (EPROM's) From Japan

AGENCY: International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-288 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of erasable programmable read only memories (EPROM's), provided for in item 687.74 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before May 27, 1986 and the Commission will make

its final injury determination by July 14, 1986 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207) and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: March 17, 1986.

FOR FURTHER INFORMATION CONTACT: Judith Zeck (202–523–0339), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of EPROM's from Japan are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on September 30, 1985, by Intel Corp., Santa Clara, CA; Advanced Micro Devices, Sunnyvale, CA; and National Semiconductor Corp., Santa Clara, CA. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured, or threatened with material injury, by reason of imports of the subject merchandise (50 FR 41230, Oct. 9, 1985).

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report.—A public version of the prehearing staff report in this investigation will be placed in the public record on May 16, 1986, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on June 4, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on May 20, 1986. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on May 23, 1986, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is May 29, 1986.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on June 11, 1986. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before June 11, 1986.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority

This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: March 27, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–7316 Filed 4–1–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–228]

Import Investigation; Certain Fans With Brushless DC Motors; Change of the Commission Investigative Attorney

Notice is hereby given that, as of this date, Gary Kaplan, Esq., and Jeffrey Gertler, Esq., of the Office of Unfair Import Investigations will be the Commission investigative attorney in the above-cited investigation instead of Jeffrey Gertler, Esq. and Patricia Ray, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Dated: March 24, 1986.

Arthur Wineburg,

Director, Office of Unfair Import Investigations, International Trade Commission.

[FR Doc. 86–7307 Filed 4–1–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–287 (Final)]

In-Shell Pistachio Nuts From Iran

AGENCY: International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-287 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether the industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Iran of pistachio nuts, not shelled, provided for in item 145.26 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in a preliminary determination to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before May 19, 1986, and the Commission will make its final injury determination by July 8, 1986 (see sections 735(a) and 735(b)(of the act (19 U.S. C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: March 11, 1986.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk, (202-523-0165), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002. Information may also be obtained via electronic mail by accessing the Office of Investigation's remote bulletin board system for personal computers at 202-523-0103.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of in-shell pistachio nuts from Iran are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on September 26, 1985, by counsel on behalf of the California Pistachio Commission, Blackwell Land Co., California Pistachio Orchards, Keenan Farms, Inc., Kern Pistachio Hulling & Drying Co-Op, Los Ranchos de Poco Pedro, Pistachio Producers of California, and T.M. Duche Nut Co., Inc. In response to that petition the Commission conducted a preliminary antidumpting investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of the subject merchandise (50 FR 47852, Nov. 20, 1985).

Participation in the investigation.—, Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to §201.11(d) of the Commission's rules (19 CFR 201.11(d), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report.—A public version of the prehearing staff report in this investigation will be placed in the public record on May 9, 1986, pursuant to §207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on May 21, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on May 14, 1986. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on May 14, 1986, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is May 16, 1986.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on May 28, 1986. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before May 28, 1986.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8) All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR §201.6).

Authority

This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: March 26, 1986

Kenneth R. Mason,

Secretary.

[FR Doc. 86-7317 Filed 4-1-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-237]

Import Investigation; Miniature Hacksaws; Commission Decision Not To Review Initial Determination Terminating Respondent

AGENCY: International Trade Commission.

ACTION: Termination of respondent TDK Saws Manufacturing Company, Ltd.

SUMMARY: The Commission has determined not to review an initial determination (ID) (Order No. 7) terminating TDK Saws Manufacturing Company, Ltd. (TDK) as a respondent in the above-captioned investigation.

FOR FURTHER INFORMATION: E. Clark Lutz, Esq., Office of the General Counsel, International Trade Commission, telephone 202-523-1641.

SUPPLEMENTARY INFORMATION: On March 5, 1986, complainant The Stanley Works (Stanley) moved (Motion No. 237-8) to terminate this investigation as to respondent TDK. In its motion to terminate, Stanley stated that TDK had been named erroneously in Stanley's complaint as a party marketing allegedly infringing hacksaws in the United States, and that Stanley subsequently became aware that TDK was not a proper party respondent. On March 12, 1986, the Commission investigative attorney filed a response in support of Stanley's motion to terminate the investigation as to TDK. On March 17, 1986, the presiding administrative law judge issued an ID terminating the investigation with respect to respondent TDK. The Commission has received no petitions for review of the ID, or comments form Government agencies.

Termination of the investigation as to respondent TDK furthers the public interest by conserving Commission resources and those of the parties involved.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 CFR 210.51.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the office of the Secretary, International Trade Commission, 701 E Street, NW., Washington, DC 20436, telephone 202-523-0161. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Issued: March 28, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-7319 Filed 4-1-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-225]

Import Investigation; Multi-Level Touch Control Lighting Switches; Commission Decision Not To Review Initial Determination Terminating Respondent on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Nonreview of an initial determination (ID) terminating a respondent on the basis of a settlement agreement.

SUMMARY: The International Trade Commission has determined not to review an ID terminating respondent Markay Industries, Inc. (Markay), in the above-captioned investigation. On January 14, 1986, complainant Southwest Laboratories, Inc., and respondent Markay filed a joint motion (Motion No. 225-12) to terminate Markay as a respondent in the investigation on the basis of a settlement agreement. The presiding administrative law judge issued an ID (Order No. 18) granting the motion for termination on February 24, 1986. No petitions for review of the ID were received, nor were any comments received from other Government agencies or the public.

FOR FURTHER INFORMATION CONTACT: John Kingery, Esq., Office of the General Counsel, International Trade Commission, telephone 202-523-1638.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule 210.53 (19 CFR 210.53).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Dated: March 25, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-7309 Filed 4-1-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-230]

Import Investigation; Unitary Electromagnetic Flowmeters With Sealed Coils; Change of the Commission Investigative Attorney

Notice is hereby given that, as of this date, Juan Cockburn, Esq., and Gary Rinkerman, Esq., of the Office of Unfair Import Investigations will be the Commission investigative attorney in the above-cited investigation instead of Gary Rinkerman, Esq., and Steven Schwartz, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Dated: March 24, 1986.

Arthur Wineburg,

Director, Office of Unfair Import Investigations International Trade Commission.

[FR Doc. 86-7308 Filed 4-1-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. TA-201-56]

Import Investigation; Wood Shingles and Shakes; Report to the President

Determination

On the basis of the information developed during the course of investigation No. TA-201-56, the Commission determines [1] that wood shingles and shakes, provided for in item 200.85 of the Tariff Schedules of the United States (TSUS), are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing articles like or directly competitive with the imported articles.

Findings and recommendations

Commissioners Eckes, Lodwick, and Rohr find and recommend that in order to remedy the serious injury found with respect to wood shingles and shakes it is necessary to impose a tariff of 35 percent ad valorem for a period of 5

[1] Vice Chariman Liebeler and Commissioner Brunsdale dissenting.

years on imports of wood shingles and shakes of western red cedar.[2]

Chairwoman Stern finds that the provision of adjustment assistance can effectively remedy the serious injury found to exist and recommends the provision of such assistance.

Commissioner Brunsdale dissents from the affirmative injury determination and recommends that the President consider a policy of assistance to retrain and relocate displaced workers.

Commissioner Liebeler voted in the negative with respect to injury and recommends that no relief be provided.

Background

On September 25, 1985, following receipt of a petition filed on behalf of domestic wood shingle and shake producers, the Commission instituted investigation No. TA–201–56, under section 201(b)(1) of the Trade Act of 1974 (19 U.S.C. 2251(b)(1)), to determine whether wood shingles and shakes, provided for in item 200.85 of the TSUS, are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

Notice of the institution of the investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 23, 1985 (50 F.R. 43010). The hearing was held in Washington, DC, on January 9, 1986, at which time all persons were afforded the opportunity to present evidence and be heard. The Commission announced its injury determinations and remedy findings and recommendations in public sessions on February 26, 1986, and March 18, 1986, respectively.

This report is being furnished to the President in accordance with section 201(d)(1) of the Trade Act (19 U.S.C. 2251(d)(1)). The information in the report was obtained from responses to Commission questionnaires, from fieldwork and interviews by members of the Commission's staff, from information obtained from other agencies, information presented at the public hearing, briefs submitted by interested parties, and information in the Commission's files, and from other sources.

A nonconfidential version of the Commission's Report to the President is contained in USITC Publication 1826 (March 1986), entitiled "Wood Shakes and Shingles: Report to the President on Investigation No. TA–201–56 Under section 201 of the Trade Act of 1974."

By Order of the Commission.

Issued: March 25, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–7318 Filed 4–1–86; 8:45 am]

BILLING CODE 7020–02–M

[2] Pursuant to section 213(e)(2) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(e)(2)), these findings and recommendations regarding remedy also apply to the subject products when imported from beneficiary (Caribbean Basin) countries.

INTERSTATE COMMERCE COMMISSION

[I.C.C. Order No. P–88]

Passenger Train Operation; Central Vermont Railway, Inc.

March 31, 1986.

To: Central Vermont Railway, Inc.

It appearing, that the National Railroad Passenger Corporation (Amtrak) has established through passenger train service between Washington, DC and Montreal, Canada. The operation of these trains requires the use of the tracks and other facilities of Boston and Maine Corporation (BM). The BM Line is temporarily out of service because of a labor dispute. An alternate route is available via the Central Vermont Railway, Inc., between Palmer, Massachusetts and White River Junction, Vermont.

It is the opinion of the Commission that the use of such alternate route is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

(a) Pursuant to the authority vested in me by order of the Commission decided January 13, 1986, and of the authority vested in the Commission by section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. 562(c)), Central Vermont Railway, Inc. (CV), is directed to operate trains of the National Railroad Passenger Corporation (Amtrak) between Palmer, Massachusetts and White River Junction, Vermont.

(b) In executing the provisions of this order, the common carriers involved shall proceed even though no agreements or arrangements now exist between them with reference to the compensation terms and conditions applicable to said transportation. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of the said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign commerce.

(d) *Effective date.* This order shall become effective at 4:45 p:m., March 14, 1986.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., March 21, 1986, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon Central Vermont Railway, Inc., and upon the National Railroad Passenger Corporation (Amtrak), and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, DC, March 14, 1986.

Interstate Commerce Commission.

Bernard Gaillard,

Agent.

[FR Doc. 86–7234, Filed 4–1–86; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 388 (Sub-No. 12)]

State Intrastate Rail Rate Authority—Louisiana

AGENCY: Interstate Commerce Commission.

ACTION: Assumption of jurisdiction over Louisiana intrastate rail transportation by the Interstate Commerce Commission.

SUMMARY: Pursuant to information tendered by the Louisiana Public Service Commission (LPSC), the Commission revokes the provisional certification of LPSC and asserts jurisdiction over intrastate freight rates in Louisiana.

EFFECTIVE DATE: May 2, 1986.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in

the Commission's decision. To purchase a copy of the full decision, write T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: March 25, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

James H. Bayne,

Secretary.

[FR Doc. 86–7235 Filed 4–1–86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Bureau of Justice Statistics

Cooperative Agreement; National Conference on Punishment for Criminal Offenses; Solicitation

I. Introduction

Since the founding of this nation, individuals who have violated the law have been punished through the deprivation of personal liberty and other rights of citizenship. The nature of punishment in the United States has been influenced both by legal and constitutional principles articulated by the courts and by changes in public opinion regarding crime and lawlessness. Public attitudes, in turn, have been influenced by philosophical and religious convictions, movements dedicated to social reform, theories about the causes of crime, and the changing level of character of crime in America.

It is only in recent years that detailed empirical information on the state of punishment in the United States has become available. Through bulletins, special reports, and other publications, the Bureau of Justice Statistics (BJS) of the U.S. Department of Justice has published a large body of data on criminal victimizations, the prosecution of felony offenders, convictions and sentencing patterns, the relative use of probation and incarceration as sanctions for crime, time served in jail and prison for various offenses, and recidivism. Given the availability of these data, it is now possible to undertake a broad-based evaluation of punishment in the United States in its broad social and political context.

To further this end, the Bureau of Justice Statistics is soliciting proposals from non-proft organizations to enter into a cooperative agreement with BJS for the purpose of organizing and running a national conference on punishment for criminal offenses in the United States. The conference would provide a forum for policymakers, practitioners, and scholars to present original papers on punishment in America using BJS data as a starting point.

II. Scope

BJS data on punishment should be used in the development of the conference papers. The conference should broadly relate empirical data on sentencing and punishment to public attitudes and values about justice as shaped by political, cultural, and social influences. To foster this goal, *the applicant must conduct or commission a public opinion survey on citizen attitudes about the appropriate purposes, types, and levels of punishment for criminal offenses. Two or more of the papers given at the conference should be based on this survey.*

Proposals that focus on specific crime control strategies (such as sentence enhancement for repeat offenders or selective incapacitation) or on specific kinds of alternatives to incarceration will not be accepted.

The following list of possible conference topics, while neither exhaustive nor definitive, illustrates the approach and scope that any conference proposal should embrace:

1. Philosophical and religious roots of punishment in the United States.
2. American constitutional principles and punishment.
3. Cross-national comparisons.
4. Variations in punishment across the States.
5. Public opinion on punishment: A commissioned survey.
6. Demographic and cultural factors influencing public attitudes on punishment.
7. Punishment and the political process within the States.
8. Recent movements to increase punishments for selected crimes, e.g., drunk driving, child abuse, and spouse abuse.

III. Review and Selection Process

Interested non-profit organizations should submit proposals in accordance with Section IV of this announcement. The major criteria to be used in reviewing proposals are:

1. Will the proposed conference contribute to a better understanding of the nature and purpose of punishment in the United States?
2. Will the proposed conference effectively utilize BJS data in conjunction with other research and information sources?
3. Does the applicant possess the institutional resource capability to draw together leaders in the fields in which papers are to be presented?
4. Does the applicant have the capacity to attract a sizeable audience of policymakers, scholars, and commentators to such a conference, as well as to promote ongoing discussion through journals, books, monographs, etc.?

Proposals will be competitively reviewed by a panel chaired by the BJS program manager for the conference. The panel will recommend the proposal which, in its view, is most responsive to the objectives of the conference. Final authority to enter into a cooperative agreement is reserved to the Director of the Bureau of Justice Statistics.

The budget for this program has been set at $75,000. The applicant selected will also receive BJS assistance in obtaining and utilizing its various data sets on sentencing and imprisonment.

IV. How to Apply

Seven (7) copies of a full proposal should be sent to: Director, Bureau of Justice Statistics, U.S. Department of Justice, 633 Indiana Ave. NW., Washington, DC 20531.

A proposal should consist of the following:

1. A program narrative no longer than fifteen (15) double-spaced, type-written pages.
2. A clear budget narrative.
3. An organization capability statement of no more than five (5) pages.
4. A completed and signed Federal Assistance Section on SF 424 and OJARS Form 4000/3.

Program Narrative

The program narrative should include the following:

a. The topics to be addressed.

b. A general rationale for topic selection that will serve as a theme for the conference.

c. A discussion of how the conference will be organized and administered.

d. The kinds of products that will result from the conference (books, journal articles, monographs, surveys).

e. A plan for effective dissemination and outreach to an audience of academians, policymakers, practitioners, and commentators.

Organizational Capability Statement

The organizational capability statement should include the following:

a. A brief discussion of the resources and facilities available for the successful organization and administration of the conference.

b. A tentative list of individuals who would present papers at the conference.

c. A demonstration of success in previously developing and administering conferences on public policy issues.

d. A demonstration of any past experience in the conduct or analysis of public opinion surveys.

Seven (7) full copies must be received by BJS by the close of business on Friday, June 6, 1986.

V. Who May Apply

Non-profit organizations (including universities) may apply for this cooperative agreement.

VI. Further information

To obtain further information contact Joseph Bessette, Deputy Director for Data Analysis at the address given in Section IV (telephone: 202–724–7765).

VII. Reference Bibliography

Prior to writing or submitting a proposal, applicants should be familiar with the following BJS publications relating to the nature and level of punishment in the United States. To obtain copies of these publications please write the BJS publications unit at the address given in Section IV, attention: Ms. Joyce Stanford.

1. Prosecution and parole 1984, Bulletin, Feb. 1986
2. Jail inmates 1983, Bulletin, Nov. 1985
3. Prosecution of felony arrests 1980, Sept. 1985
4. Capital punishment 1984, Bulletin, Aug. 1985
5. Prison admissions and releases 1982, Special report, July 1985
6. Felony sentencing in 18 local jurisdictions, Special report, June 1985
7. Prisoners in 1984, Bulletin, April 1985
8. Examining recidivism, Special report, Feb. 1985
9. Pretrial release and misconduct, Special report, Jan. 1985
10. The prevalence of guilty pleas, Special report, Dec. 1984
11. Returning to prison, Special report, Nov. 1984
12. The 1983 jail census, Bulletin, Nov. 1984
13. Sentencing practices in 13 States, Special report, Oct. 1984
14. Probation and parole 1983, Bulletin, Sept. 1984
15. Prisoners in Federal and State institutions in 1982, Aug. 1984
16. Bank robbery, Bulletin, Aug. 1984
17. Time served in prison, Special report, June 1984
18. Federal drug law violators, Bulletin, Feb. 1984
19. The severity of crime, Bulletin, Jan. 1984
20. Tracking offenders, Bulletin, Nov. 1983
21. Setting prison terms, Bulletin, Aug. 1983

Dated: March 26, 1986.

Steven R. Schlesinger,

Director, Bureau of Justice Statistics.

[FR Doc. 86–7251 Filed 4–1–86; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 86–45; Exemption Application No. D–4632 et al.]

Grant of Individual Exemptions; Texas International Airlines, Inc. Employees' Retirement Trust et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibitd transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have compiled with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Texas International Airlines, Inc., Employees' Retirement Trust (the Plan), Located in Houston, Texas

[Prohibited Transaction Exemption 86–45; Exemption Application No. D–4632]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective August 1, 1985, to the lease (the Lease) of certain real property (the Property) by the Plan to Texas International Airlines, Inc. (the Employer), the Plan sponsor, from August 1, 1985 until the date of the sale of the Property to the Employer, provided that the terms and conditions of such leasing are at least as favorable to the Plan as those which the Plan could receive in a similar transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 24, 1984 at 49 FR 17611.

Effective Dates: This exemption is effective from August 1, 1985 until January 20, 1986, the date of sale of the Property to the Employer.

Preamble: This grant hereby corrects several errors contained in the notice as follows:

First, the Texas International Airlines Retirement Plan for Administrative Employees and Dispatchers was terminated prior to publication of the notice and is no longer part of the Plan. Second, the Property is located in Hobby Airport, not the Houston Intercontinental Airport as described in the notice. Finally, the rent described in the notice referred only to the rent payable for the hanger space involved and did not include the rent for the office and maintenance facilities.

After the publication of the notice of pendency, the Department received twenty-four comments, fourteen of which requested a hearing concerning

the proposed exemption. The major concern of the commenters was that the Employer, as well as its parent company, Continental Airlines Corp., its affiliate, Continental Airlines, Inc. and its subsidiary, TXIA Holdings Corp., had filed for reorganization under Chapter 11 of the United States Bankruptcy Code (Chapter 11). Many commenters indicated that a company in bankruptcy proceedings was not a good credit risk as lessee Additional concerns were raised with respect to the independence of the Bank of the Southwest as the Plan's fiduciary, whether the rent to be paid would reflect fair market rent and whether the Plan would be better off selling the Property. Due to the hearing requests and the questions which were raised, the Department scheduled a hearing which was held on April 24, 1985.

At the hearing it was revealed that an appraisal of the fair market rental value of the Property had been prepared for the Employer in June, 1984, by Louis J. Polansky, SRPA. This appraisal found that the fair market rental value of the Property as of January 1, 1984 was $38,240.00 per month. The Employer, however, had continued to pay $13,115.00 per month rent under the Lease after June 30, 1984 (the date as of which transitional relief available for leases under section 414(c)(2) of the Act expired). The applicant represented that the Employer continued to pay the lower rent because the Bankruptcy Court had not given approval for the payment of the higher rent figure. The applicant did represent that it would pay fair market rent back to July 1, 1984. The Department informed the applicant that in accordance with the statutory requirements of section 408(a), no exemption could be granted unless and until the Employer began paying fair market rent as determined by a qualified independent appraiser.

Due to the concerns raised with respect to the Plan engaging in a continuing transaction with a company operating under Chapter 11, the Department indicated to the applicant that several additional safeguards would be required in order to obtain a grant of the requested exemption. These included a larger security deposit than the Employer had initially offered to provide and a guarantee of the Employer's obligations under the Lease by its solvent parent corporation, Texas Air Corporation.

Finally, since the Bank of the Southwest had an outstanding loan to the Employer of over $5,000,000 as of the hearing date, and that debt was subject to the Employer's Chapter 11 proceedings, the applicant informed the Department that a new trustee for the Plan, State Street Bank and Trust Company (the Trustee), had been retained, effective May 1, 1985. The Trustee has no other relationship with the Employer or the Plan.

After the hearing, the Employer obtained an order from the Bankruptcy Court on July 22, 1985, which permitted the Employer to assume the Lease and to pay market rent as determined by Mr. Polansky, from July 1, 1984, plus 11% annual interest for the amounts due prior to the date the Employer began paying fair market for the Property. On or about August 1, 1985, the Employer paid the past due amounts and began paying fair market rent for the Property. On the basis of the foregoing the Department has decided to make the effective date of this exemption August 1, 1985.

Finally, as a result of the hearing, the Plan and the Employer agreed that a sale of the Property of the Employer would be the preferred course of action. The order from the Bankruptcy Court obtained on July 22, 1985, also permitted the Employer to purchase the Property for its fair market value. The Trustee hired Landauer Associates (Landauer) to perform an appraisal of the Property. Landauer, who is independent of the Employer, appraised the fair market value of the Property as of August 6, 1985, at $2,226,000. The Air Line Pilots Association, which represents pilots working for the Employer and covered by the Plan, hired Albert Allen Associates, Inc. (Allen), who is also indpendent of the Employer, also to appraise the value of the Property. Allen appraised the value of the Property as of Auguste 28, 1985, at $2,912,000. After negotiations, a cash price of $2,675,000 was agreed upon by the parties. The sale was closed on January 20, 1986. The applicant represents that the cash sale was covered by and met the conditions of section 414(c)(5) of the Act.[1] The Trustee, after a thorough review of the transaction, including the appraisals, has concluded that the sale satisfied the conditions of section 414(c)(5) of the Act.

For Further Information Contact: David Lurie of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

[1] The Department expresses no opinion herein as to whether the requirements of section 414(c)(5) of the Act were met with respect to the sale of the Property.

California Brewing Industry Employment Security Trust Fund (the SUB Fund) and California Brewing Industry Vacation Trust Fund (the Vacation Fund; Together, the Funds) Located in San Francisco, California

[Prohibited Transaction Exemption 86-46; Exemption Application Nos. D-5361 and D-5362]

Exemption

The restrictions of section 406(b)(2) of the Act shall not apply to the transactions necessary to effect the consolidation of the SUB Fund and the Vacation Fund.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 15, 1985 at 50 FR 28662.

Written Comment: The Department received one comment letter in opposition to the proposed exemption, as well as a response to the comment letter by the applicants. Basically, the commentator argued that certain collective bargaining agreements regarding contributions to the Funds were not approved by the employees, and are undesirable insofar as they suspend certain employer contributions. The commentator opposed the proposed consolidation of the Funds because he objected to certain terms of the collective bargaining agreements and considered the agreements to be related to the proposed consolidation.

The applicants responded that the collective bargaining agreements about which the commentator complained are not contingent on the consolidation of the Funds and will apply whether or not such a consolidation occurs. Similarly, the proposed consolidation of the Funds is not contingent on implementation of the collectively-bargained contribution agreements in question. Agreements respecting contributions are the responsibility of the parties to the collective bargaining contract and are not subject to control by the trustees of the Funds. The applicants state that these agreements, and the commentator's objections to them, have no relevance to the proposed consolidation of the Funds and no relevance to the pending proposed exemption.

The Department has considered the entire record, including the comment letter received and the response by the applicants, and has determined to grant the exemption as proposed.

For Further Information Contact: Gary H. Lefkowitz of the Department,

telephone (202) 523-8881. (This is not a toll-free number.)

Semmes-Murphey Clinic Employees' Profit-Sharing Plan & Trust (the Plan) Located in Memphis, Tennessee

[Prohibited Transaction Exemption 86-47; Exemption Application No. D-6209]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale by the Plan of a watercolor to Matthew W. Wood, M.D., a party in interest with respect to the Plan, for $15,000 in cash, provided that the sales price is not less than the fair market value of the watercolor at the time of sale, and provided further that the Plan suffers no loss in connection with its acquisition and holding of the watercolor.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 17, 1986 at 51 FR 2602.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Merrill Lynch Real Estate Separate Account of Family Life Insurance Company (the Separate Account) Located in Seattle, Washington

[Prohibited Transaction Exemption 86-48; Exemption Application No. D-6322]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975 (c)(1)(A) through (E) of the Code, shall not apply to the sale of an office building (the Real Property) by the Separate Account to the General Account of the Family Life Insurance Company for the total cash consideration of $6.2 million, provided the sales price for the Real Property is not less than its fair market value on the date of the consummation of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 17, 1986 at 51 FR 2604.

Notice to Interested Persons: The applicant represents that it was unable to comply with the notice to interested persons requirement within the time frame stated in its application. However, the applicant has represented that it notified all interested persons, in the manner agreed upon between the applicant and the Department, by February 11, 1986.

Interested persons were informed that they had until March 13, 1986, to comment or request a hearing with respect to the proposed exemption. No comments or hearing requests were received by the Department.

For Further Information Contact: Ms. Jan Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 28th day of March 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86-7282 Filed 4-1-86; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-5847] et al.

Proposed Exemptions; Union Annuity Pension Plan et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in

accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued soley by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Union Annuity Pension Plan (the Plan) Located in Milwaukee, Wisconsin

[Application No. D–5847]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the provision of long term mortgage financing by the Plan to property owners where such financing is to be used to retire construction loans extended by banks which are non-fiduciary parties in interest with respect to the Plan, provided that:

A. Such mortgage loan is expressly approved by a fiduciary independent of the constfruction lender who has authority to manage or control those Plan assets being invested;

B. The terms of each such transaction is not less favorable to the Plan than the terms generally available in an arm's-length transaction between unrelated parties; and

C. No investment management, advisory, underwriting or sales commission or similar compensation is paid to the construction lender with regard to such transaction.

Summary of Facts and Representations

1. The Plan is an individual account plan established to provide pension benefits in accordance with section 302(c)(5) of the Labor Management Relations Act of 1947, as amended. As of December 31, 1983, the estimated number of Plan participants was 2,050. Participating employers contribute to the Plan on behalf of active Plan participants based upon hours worked and in accordance with the terms of applicable collective bargaining or other written agreements. As of December 31, 1984, Plan assets were approximately $12,764,002. The Trustee for the Plan, the Trust Bank located in Milwaukee Wisconsin (the Trustee) was appointed by the joint selection of the Business Manager of Iron Workers Local 8 and the President of the Eastern Wisconsin Erectors Association, Inc.

2. The Plan proposes to engage in long-term mortgage financing for certain commercial construction projects. The Plan does not propose to engage in so-called interim or construction financing. Construction of such commercial properties may be performed by persons who are parties in interest or disqualified persons with respect to the Plan.[1]

Specifically, however, the transaction for which exemptive relief is sought is the pay off by the Plan of the short term construction lender with proceeds from the long-term mortgage loan, where the short-term construction lender is a party in interest with respect to the Plan by reason of servicing the Plan's mortgages. In no case, however, will the short term lender be a fiduciary with respect to the Plan.

3. Long-term mortgage financing transactions involving the Plan typcially begin when a prospective borrower approaches a mortgage banker [2] to discuss financing. The mortgage banker makes an initial determination as to the feasibility of the proposed project. If that determination is favorable, the prospective borrower enters into an agreement authorizing the mortgage banker to act as his agent in attempting to obtain long-term financing. Typically, this agreement provides that the mortgage banker will receive a one point "origination fee" (an amount equal to 1% of the total loan) [3] from the borrower for obtaining a long-term financing commitment. Up to this point, the Plan has had no involvement in the transaction. Also to this point, the prospective borrower typically would not have obtained short-term construction financing.

In the next phase, the mortgage banker prepares a loan offering for submission to potential lenders. If the mortgage banker believes the project meets the Plan's long-term lending criteria, he presents a copy of the loan offering for consideration by the Trustee. All loan offerings must be prepared in accordance with the Trustee's criteria and must offer a return equal to the current rate for similar financing. Satisfaction of the published criteria does not, however, result in automatic approval. Financing applications are individually considered and acted upon by the Trustee after it is determined that they satisfy the published crtieria. Upon reveiw of the loan offering, the Trustee may accept the proposal or offer a counter-proposal on terms different from those originally proposed. If the proposal is accepted, or if the borrower accepts a counter-proposal, the Plan would issue a commitment to provide long-term financing.

4. The Plan's mortgage application form states, among other things, that all construction, except that which is not within the jurisdiction of a union participating in the Plan, must be performed by contractors and subcontractors contributing to and who are in good standing with the Plan and who employ 100% AFL–CIO union construction labor. Construction, including all landscaping, must be 100% completed by such labor. The borrower must furnish a list to the Plan showing the names of the general contractor and subcontractors and any additon or substitution to that list must be submitted for review by the Plan before such addition or substitution could be made. [4]

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[1] The Department notes that where the construction on the property which secures a mortgage loan made by the Plan was by a contributing employer, and a principal of such employer exercises fiduciary authority in approving the Plan's investment in the mortgage, a prohibited transaction may occur, which transaction would not be covered by this exemption.

[2] The Plan makes financing commitments only in the State of Wisconsin.

[3] The origination fee charged on any given situation depends on the then existing "market" conditions.

[4] With respect to the geographic and union labor criteria, it should be noted that section 404(a)(1) of Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participant and beneficiaries and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. In order to act prudently in making investment decisions, the trustess must consider, among other factors, the availability, risks, and potential return of alternative investments for the plan. Investing plan assets in loans meeting these criteria would not satisfy section 404(a)(1) if such loans would provide the plan with less return, in comparison to risk, than comparable investments available to the plan or if such loans would involve a greater risk to the security of plan assets that other investments offering a similar return.

Thus, in deciding whether and to what extent to invest in mortgage loans, the trustees must consider only factors relating to the interests of plan participants and beneficiaires in their retirement incomes. A decision to make a loan may not be influenced by a desire to stimulate business in a particular geographic area or to encourage the use

Continued

5. The applicant represents that the total unpaid balance of the Plan's mortgage portfolio shall not, at any time, exceed 25% of the Plan's total assets. In addition, the total unpaid balance of any one mortgage which has been committed to and closed by the Plan shall not exceed 10% of the Plan s total assets. Mortgage financing applications will only be accepted from individuals who are not parties in interest with respect to the Plan. In some instances, financing applications may be received and considered prior to the selection of general contractors or subcontractors for the project involved. The Trustee considers financing applications without regard to the identity of the general contractors and/or the subcontractors who may potentially be selected (or who may already have been selected if such selection was made prior to submission of the financing application). The Trustee's decisions on the issuance of mortgage commitments are final.

6. The borrower normally obtains construction financing through the mortgage banker. When the borrower obtains the short-term construction loan a tri-party agreement may be entered between the Plan, borrower and mortgage banker. The tri-party agreement confirms the parties' understanding that upon completion of the project in accordance with Plan requirements, the Plan will provide the approved loan amount in order to substitute its financing for the short-term funds. The agreement provides for simultaneous assignment of the short-term lender's first mortgage lien to the Plan. This agreement is not required by all mortgage bankers, and, in the absence of an agreement, substitution of the Plan's long-term loan for short-term financing follows the same assignment procedure. The mortgage banker then secures note and mortgage instruments (which documents are prepared with a view to their future assignment) from the borrower and the borrower begins construction.

Throughout construction, the mortgage banker monitors the project and its progress, making the necessary construction inspections and paying out short-term funds as the work progresses. Upon completion of the project, the mortgage banker makes the necessary inspections and final payouts and a loan closing is scheduled between the borrower and the Plan.

7. Upon completion of the project, the Plan s commitment remains contingent until satisfaction of certain conditions. The conditions include: (i) Issuance of an appraisal by a member of the American Institute of Appraisers showing that the Plan loan will not exceed 75% of the project's appraised value,[5] (ii) issuance of a title policy insuring the first lien status of the Plan's mortgage interest in an amount at least equal to the amount of the loan, (iii) receipt of an architect's certificate that construction conforms to the plans and specifications and meets applicable zoning and ordinance restrictions, (iv) issuance of a certification from the appropriate municipal building inspector that the project is complete and ready for occupancy, and (v) presentation of a hazard insurance policy in an amount at least equal to the Plan's loan and naming the Plan payee. If all those conditions are met, the Plan transfers its committed loan funds in exchange for an assignment of the note and mortgage. Typically, the borrower would sign a direction to pay, authorizing the Plan to make the loan to the borrower by paying the loan amount to the mortgage banker. Other documentation (such as title insurance policies, certifications and appraisals) are also reviewed and transferred at this time.

8. As part of the loan offering, the mortgage banker may agree to service the long-term loan on behalf of the Plan. This servicing includes receipt and handling of scheduled payments, preparation and maintenance of accounts (showing allocation of payments between principal and interest), periodic inspections of the property, and demands for proof of continuing hazard insurance coverage. As compensation for such service, the mortgage banker typically receives from the Plan an amount equal to one-eighth of one percent per annum, of the unpaid amount of the loan.[6]

9. In summary, the applicant represents that the statutory criteria contained in section 408(a) of the Act have been satisfied because:

(a) The Plan has vigorous standards for the approval of any mortgage loan;

(b) The Trustee will review and approve all applications for financing;

(c) No more than 25% of the Plan's assets will be invested in mortgage loans; and

(d) No mortgage loans will be made to parties in interest.

For Further Information Contact: Mr. Alan H. Levitas of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Pacific Lighting Corporation Pension Plan and Southern California Gas Company Pension Plan (Collectively, the Plans) Located in Los Angeles, California

[Application Nos. D-6181 and D-6182]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to: (1) The past retirement of a certain mortgage note held by Aetna Life Insurance Company (Aetna), a party in interest with respect to the Plans, by Villa Marina Partners (the Partnership), a partnership in which the Plans own a 14% interest, in connection with the purchase by the Partnership of certain real property (the Property); and (2) the past and continuing extension of credit by Aetna to the Partnership where the Property was purchased by the Partnership subject to an additional mortgage note held by Aetna.

Effective Date: If granted, this exemption will be effective March 29, 1985.

Summary of Facts and Representations

1. The Pacific Lighting Corporation Pension Plan is a defined benefit pension plan qualified under section 401(a) of the Act and sponsored by Pacific Lighting Corporation (Pacific). The Southern California Gas Company Pension Plan is a defined benefit pension plan qualified under section 401(a) of the Act and sponsored by Southern California Gas Company (Southern), a wholly-owned subsidiary of Pacific. In addition to the employees of Pacific and Southern, the Plans also provide benefits to a small number of employees of other direct and indirect subsidiaries of Pacific. All assets of the Plans are held in a master trust (the Trust) for which the Bank of America National Trust and Savings Association (the Trustee) serves as custodian and trustee. Decisions with respect to Trust investments are made by the Pension

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of union labor unless the investment, when judged solely on the basis of its economic value, would be equal to or superior to alternative investments available to the plan.

[5] In this connection, it should be noted that while the Plan may agree to lend up to 75% of appraised value, the loan will not, in any event, exceed actual borrower disbursements. Thus, the Plan loan will reimburse for costs but will not provide any additional funds that the borrower might otherwise use for his own account prior to repayment.

[6] The compensation paid for mortgage servicing with respect to a given mortgage depends on the then existing "market" conditions.

Investment Committee of Pacific Lighting Corporation and Southern California Gas Company (the Investment Committee) and by investment managers appointed by the Investment Committee. All of the five members of the Investment Committee are officers of Pacific or Southern. As of December 31, 1983 (the latest year for which audited financial statements are available), the Pacific Lighting Corporation Pension Plan had net assets of $12,567,848 and approximately 433 participants and the Southern California Gas Company Pension Plan had net assets of $395,517,922 and approximately 12,930 participants.

2. In January, 1981, a portion of the Plan's assets was invested in a guaranteed investment contract with Aetna. In addition, beginning in April, 1981, the Plans invested in a separate pooled equity real estate fund maintained by Aetna and a separate pooled participating mortgage fund maintained by Aetna. Currently, approximately $9,900,000 of the Plans' assets are invested in the Aetna separate pooled equity real estate fund (representing .69% of the total investment in the equity fund) and approximately $9,700,000 are invested in the Aetna pooled participating mortgage fund (representing 1.58% of the total investment in the mortgage fund). Because Aetna has investment discretion with respect to the assets of the Plans involved in these investments, Aetna may be deemed to be a fiduciary and a party in interest with respect to the Plans under section 3(21) and 3(14), respectively, of the Act.

3. Heitman Advisory Corporation (Heitman), an Illinois corporation with its principal office in Chicago, Illinois, is an investment adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940 and with the Securities Division of the Secretary of State of Illinois. On October 16, 1984, Heitman became the investment advisor for the Plans through a separate account maintained in the Trust.

4. On March 29, 1985, upon the advice of Heitman and after review of an investment analysis prepared by Heitman, the Investment Committee purchased an interest in the Partnership, an Illinois general partnership. The Partnership has four partners, all of whom are clients of Heitman. In addition to the Plans, the partners in the Partnership are the Alaska Permanent Fund Corporation, a public trust fund; Villa Marina-Britel, Inc., a corporation owned by a British trust fund; and the HAC Group Trust, a pooled trust comprised primarily of employee benefit plan assets for which Heitman performs discretionary management services. The aggregate interests of the Plans and of the HAC Group Trust in the Partnership exceed 20% of the total ownership interests in the Partnership.

5. The Partnership was formed to acquire, hold and manage the Property, a 245,000 square foot community shopping center known as Villa Marina Center consisting of three retail buildings, two retail/office buildings and five free-standing restaurants. The Property, which is located in Marina del Rey, Los Angeles, California, was purchased by the Partnership for $38,300,000 from Transpacific Development Company (Transpacific), a party unrelated to the Plans. The sale of the Property to the Partnership was made pursuant to an Agreement of Purchase and Sale (the Purchase Agreement) which had previously been entered into between the parent company of Transpacific and Rubloff Capital Investments, Inc. (Rubloff), both of which are unrelated parties with respect to the Plans.

Rubloff assigned its purchase rights under the Purchase Agreement to VMS Realty, Inc. (VMS), an unrelated party with respect to the Plans. The Partnership subsequently purchased those rights from VMS for $1,400,000.[7]

6. Prior to its acquisition by the Partnership, the Property was encumbered by the following three mortgages: (i) A deed of trust mortgage (the Great Western Mortgage) to Great Western Savings and Loan Association, an unrelated party with respect to the Plans, dated April 19, 1978, securing a loan in the principal amount of $3,000,000; (ii) a deed of trust mortgage to Aetna dated July 8, 1974 (the 1974 Aetna Mortgage), securing a loan in the principal amount of $1,050,000; and (iii) a second deed of trust mortgage to Aetna dated October 13, 1977 (the 1977 Aetna Mortgage), securing a loan in the principal amount of $6,550,00.

7. After examining the various existing mortgages on the Property, Heitman recognized that the 1974 Aetna Mortgage would have to be paid off at closing because of a due on sale provision in the mortgage which granted Aetna the right to call the loan upon a sale or transfer of ownership of the Property. After performing a financial analysis of expected returns on the Property, Heitman determined that a better yield on the investment in the Property could be obtained if the Great Western Morgtgage was also paid off. The 1977 Aetna Mortgage, however, had a below-market interest rate of 8.8% per annum. Heitman's financial analysis indicated that the Partnership's projected yields would be enhanced by acquiring the Property subject to this mortgage, which did not have a due on sale provision. Heitman's recommendation to the partners in the Partnership, including the Plans which were represented by the Investment Committee, to structure the investment by taking title to the Property subject to the 1977 Aetna Mortgage, was made after calculating projected yields with or without this mortgage and taking into account the below-market interest rate. As of March 29, 1975, the 1977 Aetna Mortgage had an unpaid principal balance of $6,119,134. Accordingly, the 1974 Aetna Mortgage, which had an unpaid principal balance of $954, 267 and the Great Western Mortgage, which had an unpaid principal balance of approximately $2,863,033, were paid off at the March 29, 1985 closing of the purchase of the Property. The Partnership acquired the Property subject to the 1977 Aetna Mortgage.[8]

8. The applicant represents that Heitman had no connection whatsoever with the original investment of the Plans' assets in the guaranteed investment contract with Aetna, the separate pooled equity real estate fund or the pooled participating mortgage fund maintained by Aetna. The applicant represents that neither the members of the Investment Committee, Heitman, nor any officer or shareholder of Heitman is an officer, director or .01% or more shareholder of Aetna. In addition, Aetna has no ownership interests in Heitman or in any of its affiliates. The applicant represents further although Aetna may be a party in interest and a fiduciary with respect to the Plans, Aetna had no discretion, control or involvement in the decision by the Plans' Investment Committee to invest in the Partnership or in the Partnership's decision to invest in the Property. The decision to invest Plan

[7] Heitman represents that it received no compensation from Transpacific, its parent company, Rubloff, VMS, or any other unrelated parties involved in these transactions.

[8] The applicant believes that under the Department's proposed plan asset regulations (50 FR 6361), February 15, 1985, the Property may be deemed to be an asset of the employee benefit plans investing in the Partnership. Consequently, the payoff of the 1974 Aetna mortgage from purchase proceeds derived in part from the Plans' capital contribution to the Partnership, and the acquisition of the Property by the Partnership, and the acquisition of the Property by the Partnership subject to the 1977 Aetna mortgage, resulting in an extension of credit by Aetna to the Partnership, may be deemed to be prohibited transactions under section 406(a) of the Act.

assets in the Partnership was made by the Investment Committee upon the advice of Heitman.

9. The applicant represents that the transaction were and are protective of and in the best interest of the Plans for the following reasons: (i) The Partnership was analyzed by Heitman and found to be a high quality investment opportunity for the Plans from the standpoint of the probable rate of return on the investment and according to other investment criteria established by Heitman and the Investment Committee for the Plans; (ii) Heitman has determined that the yield to the Plans, as a partner in the Partnership, will be higher by taking title to the Property subject to the 1977 Aetna Mortgage; (iii) the terms of the acquisition were negotiated on behalf of the Plans by Heitman, which is not affiliated with Aetna, and the decision with respect to the Plans' investment in the Partnership was made by the Investment Committee, whose members are not affiliated with Aetna; (iv) Aetna played no part in the decision of the Partnership to acquire the Property or in the decision of the Investment Committee to invest in the Partnership; (v) the decision of the Investment Committee to make the investment in the Partnership was based on Heitman's investment analysis, which assumed that the Property would be acquired by the Partnership subject to the 1977 Aetna Mortgage, but not subject to 1974 Aetna Mortgage; and (vi) the payments made and to be made by the Partnership under the two Aetna mortgages either were made or are being made pursuant to the terms of the mortgages, which were executed on an arm's-length basis before the decision was made by the Partnership to acquire the Property and before the decision by the Plans' Investment Committee to invest in the Partnership.

10. In summary, the applicant represents that the transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) The decision to invest the Plans' assets in the Partnership was made by the Investment Committee, the members of which are not affiliated in any way with Aetna; (2) the Investment Committee acted upon the advice of Heitman, which had prepared a financial analysis of the investment and which concluded that it was in the best interest of the Plans for the Partnership to pay off the 1974 Aetna mortgage and take the Property subject to the 1977 Aetna Mortgage; (3) Aetna had no part in the decision of the Plans to invest in the Partnership, or in the negotiations or decision with respect to the Partnership's decision to purchase the Property; and (4) the payments made and to be made by the Partnership under the two Aetna mortgages are pursuant to the terms of the mortgages, which were executed on an arm's-length basis before the decision by the Plan's Investment Committee to invest in the Partnership.

Notice to Interested Persons: Notice of the proposed exemption will be provided to all interested persons, in the manner agreed upon by the applicant and the Department, within 30 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment.

For Further Information Contact: Ms. Katherine Lewis of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Shoney's Inc. Profit Sharing Plan (the Plan) Located in Nashville, Tennessee

[Application No. D–6581]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale by the Plan of a parcel of real estate (the Property) to Shoney's, Inc. (the Employer), for $292,000 in cash, provided such amount is not less than the fair market value of the Property on the date of the sale.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with approximately 2,975 participants. As of December 2, 1985, the Plan had approximately $2,700,000 in total assets.

2. The Property is located at 5012 South Third Street, Louisville, Kentucky. It consists of a parcel of land upon which a restaurant has been built. The Property is currently leased to the Kentucky Fried Chicken Corporation (KFC) and is being operated as a KFC restaurant. KFC is an unrelated third party with respect to the Plan. The Property was purchased by the Plan from the prior profit sharing plan maintained by the Employer on November 17, 1972. The purchase price was $94,690.42.

3. Due to the Employer's decision to terminate the Plan, it has become necessary to liquidate the Plan's assets. An Application for Determination Upon Termination was filed with the Internal Revenue Service on December 2, 1985. Liquidation of assets will proceed as soon as approval of that termination has been granted. The Employer proposes to purchase the Property from the Plan for cash. No commissions will be paid on the sale.

4. Mr. James A. Russell, an independent appraiser located in Louisville, Kentucky, has appraised the Property as having a fair market value of $292,000 as of October 26, 1985. This is the price at which the Employer proposes to purchase the Property from the Plan. The Property has already been offered to KFC for purchase at the value set by the appraisal. KFC was entitled to a right of first refusal pursuant to its lease of the Property. KFC had declined to exercise that right of first refusal.

5. In summary, the applicants represent that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (a) The sale is a one-time transaction for cash; (b) no commissions will be paid upon the sale; (c) the sales price for the Property has been determined by independent appraisal; (d) the Plan must sell the Property because it is being terminated; and (e) the Plan has attempted to sell the Property to KFC, a third party, for its appaised value, and KFC would not purchase the Property.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section

401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 21st day of March, 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 86-7283 Filed 4-1-86; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Humanities Panel Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Date: April 29, 1986
Time: 9:00 a.m. to 5:00 p.m.
Room: 315
Program: Office of the Bicentennial of the U.S. Constitution. This meeting will review Public Humanities Projects applications for Constitutional proposals submitted to the Division of General Programs, for projects beginning after October 1, 1986.

The proposed meeting is for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) Trade secrets and commercial financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information of the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that this meeting will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about this meeting can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506, or call (202) 786-0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 86-7265 Filed 4-1-86; 8:45 am]

BILLING CODE 7536-01-M

Music Advisory Panel; Closed Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Jazz Fellowships) to the National Council on the Arts will be held on April 21-23, 1986 from 9:00 a.m. to 5:30 p.m., Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682-5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

March 26, 1986.

[FR Doc. 86-7214 Filed 4-1-86; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel; Closed Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Challenge Section) to the National Council on the Arts will be held on April 17, 1986 from 9:00 a.m. to 6:00 p.m., Room M-07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

March 26, 1986.

[FR Doc. 86-7215 Filed 4-1-86; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Committee Management; Astronomical Sciences Advisory Committee et al.

The cognizant Assistant Directors of the advisory committees listed below have determined that the renewal of

these advisory committees are necessary and in the public interest in connection with the performance of duties upon the Director, National Science Foundation, and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Astronomical, Atmospheric, Earth, and Ocean Sciences (7)

Advisory Committee for Astronomical Sciences
Advisory Committee for Atmospheric Sciences
Advisory Committee for Earth Sciences
Advisory Committee for Ocean Sciences
Advisory Committee for Polar Programs
Advisory Panel for Ocean Sciences Research
Earth Sciences Proposal Review Panel

Biological, Behavioral, and Social Sciences (34)

Advisory Panel for Ethics and Values Studies

Division of Behavioral and Neural Sciences (11)

Advisory Panel for Archaeology and Physical Anthropology
Advisory Panel for Anthropological Systematic Collections
Advisory Panel for Developmental Neurosciences
Advisory Panel for Integrative Neural Systems
Advisory Panel for Linguistics
Advisory Panel for Memory and Cognitive Processes
Advisory Panel for Molecular and Cellular Neurobiology
Advisory Panel for Psychobiology
Advisory Panel for Sensory Physiology and Perception
Advisory Panel for Social and Developmental Psychology
Advisory Panel for Social and Cultural Anthropology

Division of Biotic Systems and Resources (4)

Advisory Panel for Ecology
Advisory Panel for Ecosystem Studies
Advisory Panel for Population Biology and Psychological Ecology
Advisory Panel for Systematic Biology

Division of Cellular Biosciences (5)

Advisory Panel for Cell Biology
Advisory Panel for Cellular Physiology
Advisory Panel for Developmental Biology
Advisory Panel for Eukaryotic Genetics
Advisory Panel for Regulatory Biology

Division of Molecular Biosciences (5)

Advisory Panel for Biochemistry
Advisory Panel for Biological Instrumentation
Advisory Panel for Biophysics
Advisory Panel for Metabolic Biology
Advisory Panel for Prokaryotic Genetics

Division of Social and Economic Science (8)

Advisory Panel for Decision and Management Science
Advisory Panel for Economics
Advisory Panel for Geography and Regional Science
Advisory Panel for History and Philosophy of Science
Advisory Panel for Law and Social Sciences
Advisory Panel for Measurement Methods and Data Improvement
Advisory Panel for Political Science
Advisory Panel for Sociology

Engineering (1)

Advisory Committee for Engineering

Mathematical and Physical Sciences (5)

Advisory Committee for Chemistry
Advisory Committee for Computer Research
Advisory Committee for Materials Research
Advisory Committee for Mathematical Sciences
Advisory Committee for Physics

Scientific, Technological, and International Affairs (2)

Advisory Committee for Industrial Science and Technological Innovation.
Advisory Committee for International Programs

Authority for these committees will expire on March 31, 1988 unless formal determination is made that continuance is in the public interest.

M. Rebecca Winkler,

Committee Management Officer.

March 28, 1986.

[FR Doc. 86-7269 Filed 4-1-86; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Law and Social Sciences; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Law and Social Science.

Date and Time: April 18th and 19th, 1986; 9:00 A.M. to 6:00 P.M. each day.

Place: Room 1243, 12th floor, National Science Foundation, 1800 G Street NW, Washington, D.C. 20550.

Type of Meeting: Closed.

Contact Person: Dr. Felice J. Levine, Program Director, Law and Social Science, Room 312, National Science Foundation, Washington, D.C. 20550, telephone (202) 357-9567.

Purpose of Panel: To provide advice and recommendations concerning support for research in Law and Social Science.

Agenda: Review and evaluate research and proposals and projects as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

March 27, 1986.

[FR Doc. 86-7268 Filed 4-1-86; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-341]

Detroit Edison Co. (Fermi 2); Receipt of Request for Action Under 10 CFR 2.206

Notice is hereby given of the receipt of a Petition for immediate action with respect to Fermi 2. By letter dated February 15, 1986, the Safe Energy Coalition of Michigan (SECOM) requested that the Commission take immediate action to require licensee to show cause why its license should not be revoked in light of the allegations set forth by Petitioner.

SECOM asserts as grounds for its request that: (1) The NRC has not elevated enforcement actions against the licensee to the extent mandated by the Atomic Energy Act and the Code of Federal Regulations, (2) continued lack of management controls at levels that meet NRC requirements have resulted in ineffective programs and incompetence at critical levels of the licensee's organization including operations, maintenance, security, and engineering, (3) twenty-six violations issued recently were willful in that they showed a careless disregard for requirements, (4) the licensee has been unable to comply with certain NRC requirements, and (5) the recently released operations improvement plan will not provide the substantive changes needed to correct

the serious breakdown of operations at Fermi 2.

The Petition is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. As provided by § 2.206, appropriate action will be taken on the Petition within a reasonable time.

A copy of the Petition is available for inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and in the local public document room for the Fermi 2 located at Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Bethesda, Maryland, this 26th day of March 1986.

For the Nuclear Regulatory Commission.

Richard H. Vollmer,

Deputy Director, Office of Inspector and Enforcement.

[FR Doc. 86-7285 Filed 4-1-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219]

GPU Nuclear Corp. and Jersey Central Power & Light Co.; Oyster Creek Nuclear Generating Station; Exemption

I

The GPU Nuclear Corporation (the licensee), et al., is the holder of Provisional Operating License No. DPR-16 which authorizes operation of the Oyster Creek Nuclear Generating Station. The license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The Oyster Creek Station power source is a boiling water reactor located at the licensee's site in Ocean County, New Jersey.

II

On November 19, 1980, the Commission published a revised 10 CFR 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R contains fifteen subsections, lettered A through O, each of which specifies reqirements for a particular aspect of the fire protection features at a nuclear power plant. One of these fifteen subsections, III.G., is the subject of this exemption request. Specifically, subsection III.G.2 requires that one train of cables and equipment necessary to achieve and maintain safe shutdown be maintained free of fire damage by one of the following means:

a. Separation of cables and equipment and associated non-safety circuits of redundant trains by a fire barrier having a 3-hour rating. Structural steel forming a part of or supporting such fire barriers shall be protected to provide fire resistance equivalent to that required of the barrier;

b. Separation of cables and equipment and associated non-safety circuits of redundant trains by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area; or

c. Enclosure of cables and equipment and associated non-safety circuits of one redundant train in a fire barrier having a 1-hour rating. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area.

III

By letter dated april 3, 1985, as supplemented by letters dated July 12 and October 9, 1985, the licensee requested seven exemptions for thirteen fire areas from the requirements of section III.G of Appendix R, to the extent that it requires physical separation and/or fire protection systems to protect redundant trains of safe shutdown related cable and equipment. The April 3, 1985, submittal superseded the licensee's letters dated December 16, 1983, and February 13 and May 3, 1984.

In the meeting summary dated February 28, 1986, the licensee provided information relevant to the "special circumstances" finding required by revised 10 CFR 10.12(a) (See 50 FR 50764). The licensee stated that existing and proposed fire protection features at Oyster Creek accomplish the underlying purpose of the rule. Implementing additional modifications to provide additional suppression systems, detection systems, and fire barriers would require the expenditure of engineering and construction resources as well as the associated capital costs which would represent an unwarranted burden on the licensee's resources. The licensee stated that the costs to be incurred are as follows:

- Engineering and installation of additional piping, sprinkler heads, and supporting structures.
- Engineering and installation of fire barriers, supports, support protection, and ongoing maintenance.
- Significant rerouting of high power cabling and associated conduits, ducts, and supports.
- Possible need to provide additional fire pumps and/or diesel generator capacity.
- Increased surveillance on new or extended fire suppression and fire detection systems.
- Increased congestion in numerous plant locations complicating future plant modifications/operation.

The licensee stated that these costs are significantly in excess of those required to meet the underlying purpose of the rule. The staff concludes that "special circumstances" exist for the licensee's requested exemptions in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purposes of Appendix R to 10 CFR Part 50. See 10 CFR 50.12(a)(2)(ii).

The licesee's request for seven exemptions (thirteen fire areas) was reduced to four exemptions (eight fire areas) because the staff concluded that three exemptions (five areas) were not needed. The acceptability of the exemption requests for each of the eight fire areas is addressed below. Details are contained in the NRC staff's related Safety Evaluation.

The fire areas related to the four exemptions addressed herein are:

(1) Reactor Building Elevation 51 feet (Fire Area RB-FZ-1D)
(2) Reactor Building Elevation 23 feet (Fire Area RB-FZ-1E) (1 of 2 exemptions)
(3) Reactor Building Elevation (−) 19 feet (Fire Area RB-FZ-1F)
(4) Turbine Building Lube Oil Area (Fore Area TB-FZ-11B)
(5) Turbine Building Basement Floor-South End (Fire Area TB-FZ-11D)
(6) Turbine Building Condenser Bay (Fire Area TB-FZ-11E)
(7) Turbine Building Basement & Mezzanine (Fire Area TB-FZ-11H)
(8) Office Building—480V Switchgear Room (Fire Area OB-FA-6B) (1 of 2 exemptions)

Based on our evaluation, we concluded that the three exemptions requested for the following areas are not needed:

(9) Reactor Building Elevation 23 feet (Fire Area RB-FZ-1E) (1 of 2 exemptions)
(10) Office Building—480V Switchgear Room (Fire Area OB-FA-6B) (1 of 2 exemptions)
(11) Office Building—Motor Generator Set Room (Fire Area OB-FA-8A)
(12/13) Office Building—Battery & Electrical Tray Room (Fire Area OB-FZ-8C) (2 exemptions)

Exemption 1 (Fire Areas RB–FZ–1D, 1E and 1F and Fire Area OB–FZ–6B)

The licensee requested an exemption from the technical requirements of Section III.G of Appendix R in each of these areas to the extent that it requires the installation of an area-wide automatic fire suppression system.

Discussion (Fire Area RB–FZ–1D)

This area is bounded by walls, floor and ceiling of reinforced concrete. However, this portion of the Reactor Building communicates, via unprotected openings, with other plant locations which the licensee has designated as separate fire areas. These penetrations are delineated in Appendix E of the licensee's April 3, 1985 report.

This fire area contains electrical circuits for hot shutdown paths 1, 2, 3, and 4 and for cold shutdown paths, 1, 2 and 3 as defined in the above-referenced report. For a fire in this area, hot shutdown is achieved using systems from path 1 and cold shutdown is achieved using path 3. All required hot shutdown path 1 systems that are located in this area are protected by a 1-hour fire-rated barrier. Cold shutdown path 3 systems in this area that would be damaged in a fire can either be repaired within 72 hours or an alternate means of achieving shutdown exists outside of this fire area via manual operation of certain valves.

The fire loading in this area has been calculated to be 12,500 BTU/sq.ft. which corresponds to a fire severity of less than 10 minutes as determined by the ASTM E–119 time-temperature curve.

Existing fire protection includes an area-wide fire detection system; two fixed, water spray deluge systems which cover cables in trays; portable fire extinguishers and manual hose stations. The licensee has committed to reroute certain safe shutdown-related circuits outside of this fire area and to protect others in a 1-hour fire barrier as delineated in the April 3, 1985 fire hazards analysis report.

Discussion (Fire Area RB–FZ–1E)

This area is bounded by walls, floor and ceiling of reinforced concrete, which contain unprotected openings into adjoining plant locations, that the licensee has identified as separate fire areas, as delineated in the April 3, 1985 report.

This fire area contains electrical circuits for hot shutdown paths 1, 2, 3 and 4 and for cold shutdown paths 1, 2 and 3 as defined in the above-referenced report. For a fire in this area, hot shutdown is achieved using shutdown path 1 and cold shutdown using path 3. With the exception of the reactor scram system circuitry, all required hot shutdown path 1 systems that would be damaged by a fire in this area are protected by a 1-hour barrier. Cold shutdown path 3 systems in this area that would be subject to fire damage can either be repaired within 72 hours or an alternate means of achieving safe shutdown exists outside of this fire area by manual operation of certain valves.

The fire loading in this area has been calculated to be 20,000 BTU/sq ft. which corresponds to a fire severity of less than 16 minutes as determined by the ASTM E–119 time-temperature curve.

Existing fire protection includes an area-wide fire detection system; two fixed, water spray deluge systems which cover cables in trays; portable fire extinguishers and manual hose stations. The licensee has committed to reroute certain safe-shutdown-related circuits outside of this fire area and to protect others in a 1-hour fire barrier as delineated in the April 3, 1985 report.

Discussion (Fire Area RB–FZ–1F)

This area is bounded by walls, floor and ceiling of reinforced concrete which contain unprotected openings into an adjoining plant location that the licensee has identified as a separate fire area.

This fire area contains electrical circuits for hot shutdown paths 1, 2, 3, and 4 and for cold shutdown paths 1, 2, and 3 as defined in the April 3, 1985 report. For a fire in this area, hot shutdown is achieved using shutdown path 1 and cold shutdown using path 1. All required hot shutdown systems that would be damaged by a fire in this area are protected by a 1-hour fire barrier. If cold shutdown path 3 systems were lost in a fire, an alternate means of achieving safe shutdown exists which is independent of this fire area.

The fire loading in this area has been calculated to be 1,500 BTU/sq. ft. which corresponds to a fire severity of less than 2 minutes as determined by the ASTM E–119 time-temperature curve.

Existing fire protection includes an automatic fire detection system; portable fire extinguishers and manual hose stations. The licensee has committed to reroute certain safe shutdown circuits outside of this fire area and to protect others in a 1-hour fire barrier as delineated in the April 3, 1985 report.

Discussion (Fire Area OB–FA–6B)

This fire area is bounded by walls, floor and ceiling of 3-hour fire-rated construction except for the 1-hour rated wall common with adjacent fire area OB–FA–6A. In the event of a fire in this location, hot and cold shutdown will be achieved using shutdown path 2. The required shutdown-related cables are either protected by a 1-hour fire barrier or an alternate means for achieving safe-shutdown is available outside of this area.

The fire load has been calculated to be 71,000 BTU/sq. ft. which represents a fire severity of less than 1-hour as determined in the ASTM E–119 time-temperature curve.

Existing fire protection includes an area-wide fire detection system; an automatic halon fire suppression system for the switchgear room portion of this fire area; portable fire extinguishers and manual hose stations. In the April 3, 1985 report, the licensee proposed to make structural, ventilation system and halon system modifications to isolate this fire area from adjacent plant locations; to reroute certain shutdown related cables and to protect others in a 1-hour fire-rated barrier.

The licensee justified the exemptions in these four areas on the basis of the low fire loading, the existing fire protection and the proposed modifications.

Evaluation

The technical requirements of section III.G.2 are not met in these locations because of the absence of an area-wide automatic fire suppression system. In addition, section III.G.3 is not met because of the absence of an area-wide, fixed, fire suppression system in a location where an alternate shutdown capability has been provided.

Our principal concern was that in the event of a fire the absence of an area-wide automatic fire suppression system would result in loss of all shutdown capability. However, the fire load in these areas is low, with combustible material generally dispersed. Where concentrated quantities of combustible cable insulation exists, the cables are protected by a deluge system.

All of these areas are protected by a fire detection system. If a fire should occur, the staff has determined that it will be detected in its incipient stages, before significant propagation occurred. The fire would then be put out by the plant fire brigade using the portable fire extinguishers and manual hose stations. If rapid room temperature rise occurred before the arrival of the brigade, existing fire suppression systems will actuate to limit fire spread, to protect the cables covered by the systems and to reduce room temperature. Until the arrival of the brigade and eventual fire suppression, the 1-hour fire barriers installed to protect one shutdown pathway provides sufficient passive fire

protection to provide us with reasonable assurance that those systems would remain free of fire damage. For those redundant shutdown systems that are not similarly protected, the licensee has identified an alternate capability that is physically and electrically independent of these fire areas. For certain cold shutdown systems that might be lost in a fire, the licensee has repair procedures with materials on site, that will enable these systems to be restored to operable condition within 72 hours. Therefore, the absence of area-wide fire suppression systems is not necessary to provide reasonable assurance that safe-shutdown conditions can be achieved and maintained.

Based on our evaluation, we conclude that the licensee's alternate fire protection configuration with the proposed modifications, will achieve an acceptable level of fire protection equivalent to that required by sections III.G.2 and III.G.3. Therefore, the licensee s request for exemption from an area-wide fire suppression system in the following areas should be granted:

Reactor Building Elevation 51 feet (Fire Area RB–FZ–1D)
Reactor Building Elevation 23 feet (Fire Area RB–FZ–1E)
Reactor Building Elevation (–) 19 feet (Fire Area RB–FZ–1F)
Office Building-480V Switchgear Room (Fire Area OB–FA–6B)

Exemption 2 (Fire Areas TB–FZ–11B and TB–FZ–11H)

The licensee requested an exemption from the technical requirement of section III.G.2 of Appendix R in these two areas to the extent that it requires that redundant shutdown circuits in a pit area be separated by a 3-hour fire barrier.

Discussion (Fire Area TB–FZ–11B)

This area is bounded by masonry walls, floor and ceiling. However, this portion of the Turbine Building communicates, via unprotected openings, with other plant areas that the licensee has identified as separate fire areas. These penetrations are delineated in Appendix E of the licensee's April 3, 1985 report.

This fire area contains electrical circuits for hot shutdown paths 1, 2, 3, and 4 and cold shutdown paths 1, 2, and 3 as defined in the April 3, 1985 report. For a fire in this area, hot shutdown is achieved using hot shutdown path 1, with isolation condenser system "A" instead of "B". Cold shutdown is achieved using path 1. Redundant shutdown-related circuits are located in a pit area where separation per the requirements of section III.G.2 is not achieved.

The fire load in this area has been calculated to be approximately 586,000 BTU/sq. ft., which represents a fire severity of approximately 7 hours as determined by the ASTM E–119 time-temperature curve. The principal combustible material consists of turbine lube oil and cable insulation.

Existing fire protection includes a fire detection system, an automatic sprinkler system over cable trays; water spray systems for the lube oil storage tank; a sprinkler system for the bearing lift pumps; portable fire extinguishers and manual hose stations. In the April 3, 1985 report, the licensee committed to reroute certain safe shutdown circuits outside of this fire area. The licensee also committed to fill the pit area where vulnerable shutdown-related cables are located with sand or with fire-rated silicon foam.

Discussion (TB–FZ–11H)

This area is bounded by reinforced concrete walls, floor and ceiling. However, this portion of the Turbine Building communicates, via unprotected openings, with other plant locations that the licensee has identified as separate fire areas.

This fire area contains electrical circuits for hot shutdown paths 1, 2, 3, and 4 and cold shutdown paths 1, 2, and 3 as defined in the April 3, 1985 report. For a fire in this area, hot and cold shutdown will be achieved using shutdown path 2. Shutdown path 2 circuits are located in a pit area where separation per the requirements of section III.G.2 is not achieved.

There are no in-situ fire hazards in this location. The fire load as calculated by the licensee is negligible.

Existing fire protection includes portable fire extinguishers and manual hose stations. The licensee committed to fill the pit area where vulnerable shutdown cables are located with sand or with a fire-rated silicon foam.

The licensee justified the exemptions in these locations on the basis that the fire hazard in the pits in negligible. Also, the fire hazard in the area around the pit is either negligible or mitigated by fire suppression systems. The licensee also justified these exemptions on the ability of the sand or silicon foam to prevent fire damage to redundant cables where they are vulnerable.

Evaluation

The technical requirements of section III.G.2 are not met in this area because redundant shutdown-related cables are not separated by a 3-hour barrier within the pit area.

Our concern was that because of the lack of adequate physical separation, the cables in these pits would be vulnerable to fire damage. However, because the pits are located in the floor and because products of combustion rise in a fire, we do not expect a fire outside the pit to have any significant affect on the cables within the pit. Also, because the pit area will be filled with sand or a fire-rated silicon foam, we have reasonable assurance that a fire will not originate within it or that a possible flammable liquid spill would affect the cables.

Based on our evaluation, we conclude that the licensee's alternate fire protection configuration with the proposed modifications will achieve an acceptable level of fire protection equivalent to that provided by section III.G.2. Therefore, the licensee's request for exemption from a 3-hour fire barrier in the following locations should be granted:

Turbine Building Lube Oil Area (Fire Area TB–FZ–11B)
Turbine Building Basement & Mezzanine (Fire Area TB–FZ–11H)

Exemption 3 (Fire Area TB–FZ–11D)

The licensee request an exemption from the technical requirements of section III.G.2 of Appendix R to the extent that it requires an area-wide automatic fire detection and suppression system.

Discussion

This area is bounded by walls, floor and ceiling or reinforced concrete. However, this portion of the Turbine Building communicates, through unprotected openings, with adjoining plant locations that the licensee has identified as separate fire areas. These penetrations are delineated in the licensee's April 3, 1985 report.

This fire area contains electrical circuits for hot shutdown paths 1, 2, 3, and 4 and for cold shutdown paths 1, 2, and 3 as described in the above-referenced report.

For a fire in this area both hot and cold shutdown is achieved using shutdown path 1. All required path 1 shutdown-related circuits are either protected by a 1-hour fire-rated barrier or the licensee has identified an alternate means which is independent of this area to safely shut down the plant.

The fire load in this location has been calculated to be 12,400 BTU/sq. ft., which represents a fire severity of less than 10 minutes.

Existing fire protection includes an automatic sprinkler system which protects cables in trays; a water spray

system which covers the hydrogen seal oil unit; portable fire extinguishers and manual hose stations. In the April 3, 1985 report, the licensee committed to relocate certain shutdown-related cables and to protect others in a 1-hour fire-rated barrier.

The licensee justifies this exemption on the basis of the low fire loading, existing fire protection and proposed modifications

Evaluation

The technical requirements of section III G. are not met in this area because of the absence of area-wide fire detection and suppression systems. Section III.G.3 is not met because a fixed fire detection and suppression system has not been provided for circuits for which an alternate shutdown capability has been provided.

We were concerned that because this area was not protected by an area-wide fire detection and suppression system a fire would damage redundant shutdown systems. However, the fire load is low with combustible materials generally dispersed. Where concentrated quantities of combustible materials exist, such as in cable trays and the hydrogen seal oil unit, these combustibles are protected by an automatic fire suppression system. Where no concentrated combustibles exist, we expect a fire in those locations to be of initially limited magnitude and extent. Upon discovery by plant operators, the fire brigade would be dispatched and would put out the fire using existing manual fire fighting equipment. If the fire occurred in the cable trays or in the seal oil unit, we expect the fire suppression systems to actuate and control fire spread. Until the arrival of the fire brigade and eventual fire extinguishment, those required shutdown systems that are vulnerable to fire damage in this area are protected by a 1 hour fire barrier. Therefore, an area-wide fire detection and suppression system is not necessary to provide reasonable assurance that safe shutdown could be achieved and maintained.

Based on our evaluation, we conclude that the licensee s alternate fire protection configuration with the proposed modifications will achieve an acceptable level of fire protection equivalent to that required by sections III.G.2 and III.G.3. Therefore, the licensee's request for exemption from an area-wide fire detection and suppression system in the Turbine Building Basement Floor-South End (Fire Area TB–FZ–11D) should be granted.

Exemption 4 (Fire Areq TB–FZ–11E)

The licensee requested an exemption from the technical requirements of section III G.3 of Appendix R to the extent that it requires a fixed fire detection system in an area for which an alternate shutdown capability has been provided.

Discussion

The area is bounded by reinforced concrete walls, floor and ceiling. However, this portion of the Turbine Building communicates, through unprotected openings, with other plant locations that the licensee has identified as separate fire areas.

This fire area contains electrical circuits for hot shutdown paths 1, 2, 3 and 4 and for cold shutdown paths 1, 2, and 3 as defined in the licensee's April 3, 1985 report. For a fire in this area, hot and cold shutdown is achieved using shutdown path 1. For those required shutdown path 1 systems that are located in this area and may be damaged by a fire, the licensee has provided an alternate capability that is physically and electrically independent of this fire area.

The fire load in this location has been calculated to be 8,000 BTU/sq. ft., which represents a fire severity of less than 7 minutes.

Existing fire protection includes an automatic sprinkler system located throughout the condenser bay; portable fire extinguishers and manual hose stations. In the April 3, 1985 report, the licensee committed to reroute certain shutdown-related circuits outside of this fire area.

The licensee justified the examption on the bases of the low fire load, the existing fire protection, the proposed modifications and the ability to safely shut down the plant if a fire should occur in this area.

Evaluation

The technical requirements of section III.G.3. are not met in this area because of the absence of a fire detection systems.

We were concerned that if a fire should occur, products of combustion would spread into adjoining fire areas and damage systems that would be necessary to safely shut down the plant. However, the fire load in this location is low. Combustible materials are dispersed throughout the area. We, therefore, expect a potential fire to develop slowly with initially low heat buildup and smoke generation. Upon discovery of the fire, the plant fire brigade would respond and extinguish it using manual fire fighting equipment. If the fire increased in intensity prior to the arrival of the brigade, we expect the automatic sprinkler system to actuate to control the fire, to limit room termperature rise and to protect the shutdown systems that may be threatened. If redundant shutdown systems were damaged within this location, an alternate shutdown capability exists that is outside this fire area. Because some of the walls and the ceiling contain unprotected openings we expect some smoke to propagate into adjoining fire areas. But because of the automatic sprinkler system in this area and the low fire loading, we conclude that the amount of smoke would not represent a significant threat to shutdown systems in the adjoining area. We, therefore, conclude that the absence of a smoke detector system in this area has no safety significance.

Based on our evaluation, we conclude that the licensee s alternate fire protection configuration with the proposed modifications, will achieve an acceptable level of fire protection equivalent to that required by sections III.G.2 and III.G.3. Therefore, the licensee's request for exemption from a fire detection system in the Turbine Building Condenser Bay (Fire Area TB–FZ–11E) should be granted.

IV

Accordingly, the Commission has determined pursuant to 10 CFR 50.12(a), that: (1) These exemptions as described in section III are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security, and (2) special circumstances are present for these exemptions in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purposes of Appendix R to 10 CFR Part 50. Therefore, the Commission hereby grants the exemption requests identified in section III above.

Pursuant to 10 CFR 51.32 the Commission has determined that the granting of these exemptions will not result in any significant environmental impact (50 FR 49633, December 3, 1985).

The Safety Evaluation dated March 24, 1986, related to this action and the above referenced submittals by the licensee are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Ocean County Library, 101 Washington Street, Toms Rivers, New Jersey 08753.

A copy of the Safety Evaluation may be obtained upon written request to the U S. Nuclear Regulatory Commission,

Washington, DC 20555, Attention: Director, Division of BWR Licensing.

These exemptions are effective upon issuance.

Dated at Bethesda, Maryland, this 24th day of March 1986.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Division of BWR Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 86-7288 Filed 4-1-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-2061-SC; ASLBP No. 84-502-01-SC]

Kerr-McGee Chemical Corp. (Kress Creek Decontamination); Hearing

March 27, 1986.

Before Administrative Judges: John H Frye, III, Chairman, Dr. James H. Carpenter, Dr. Jerry Kline.

Please take notice that an evidentiary hearing in this matter will take place from April 28 through May 2, 1986, and continue on May 5 and 6, 1986, if necessary. On April 28, the hearing will commence in City Hall Council Chambers, 475 Main Street, West Chicago, Illinois 60185, at 1:00 P.M., CDT. The presiding Atomic Safety and Licensing Board will hear oral limited appearance statements from members of the public from 4:00 P.M. to 6:00 P.M. on that day. Members of the public who desire to make such statements are requested to notify Ellen C. Ginsberg, Esq., Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, by postcard mailed not later than April 14, 1986. Written limited appearance statements may be filed at any time.

On subsequent days, the hearing will be held in Room 1669, U.S. District Court for the Northern District of Illinois. The Court's address is 219 South Dearborn Street, Chicago, Illinois 60604.

On those days, other than May 5, the hearing will commence at 9:30 A.M. and adjourn at 5:00 P.M., CDT. On May 5, the hearing will commence at 2:30 P.M. and adjourn at 5:00 P.M.

It is so ordered.

Bethesda, Maryland, March 27, 1986.

For the Atomic Safety and Licensing Board.

John H. Frye, III,

Chairman, Administrative Judge.

[FR Doc. 86-7290 Filed 4-1-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-344]

Portland General Electic Co., The City of Eugene, OR, Pacific Power & Light Co. (Trojan Nuclear Plant); Order Modifying License Confirming Additional Licensee Commitment on Emergency Response Capability

I

Portland General Electric Company, *et al.* (the licensee or PGE) is the holder of Facility Operating License No. NPF-1 which authorizes the operation of the Trojan Nuclear Plant (the facility) at steady-state power levels not in excess of 3411 megawatts thermal. The facility is a pressurized water reactor (PWR) located at the licensee's site in Columbia County, Oregon.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be imposed on operating reactors and on plants under construction. These requirements include matters related to operational safety, siting and design, and emergency preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modification, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) enclosing Supplement 1 to NUREG-0737 was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

The licensee responded to Generic Letter 82-33 by letter dated April 15, 1983. In this submittal, the licensee made commitments to complete the basic requirements. The licensee's commitments included: (1) Dates for providing required submittals to the NRC, (2) dates for implementation certain requirements, and (3) a schedule for providing implementation dated for other requirements. The Licensee supplied additional information on the status of the implementation of some related items by letters dated August 2, November 23, 1983, January 27 and May 23, 1984. The staff reviewed these letters and found that these dates were reasonable and achievable dates for meeting the Commission requirements and concluded that the schedule proposed by the licensee would provide timely upgrading of the licensee's emergency response capability. On June 14, 1984, the NRC issued an "Order Confirming Licensee Commitments on Emergency Response Capability" which confirmed the licensee's commitments.

IV

The June 14, 1984, Order stated that for those requirements for which the licensee committed to a schedule for providing implementation dates, those dates would be reviewed, negotiated and confirmed by a subsequent Order. In conformance with the milestones in the June 14, 1984 Order, the licensee's letter dated Decebmer 28, 1984, provided a completion schedule for implementation of Regulatory Guide 1.97 as applied to the licensee's emergency response facilities.

The enclosed Table summarizing the licensee's schedular commitment for the requirement was developed by the NRC staff from the information provided by the licensee. The staff reviewed the licensee's December 28, 1984 letter and discussed the completion date with the licensee.

The NRC staff finds that this date is reasonable and achievable for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of the licensee's commitment is required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

V

Accordingly, pursuant to Sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Part 50, it is hereby ordered, effective immediately, that license NPF–1 modified to provide that the licensee shall:

Implement the specific item described in the Enclosure to this ORDER in the manner described in the PGE submittal noted in Section IV herein no later than the date in the Enclosure.

Extension of time of completing this item may be granted by the Director, Division of PWR Licensing-A, for good cause shown.

VI

The licensee or any other person with an adversely affected interest may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy shall also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in section V of this Order.

This Order is effective upon issuance.

Dated in Bethesda, Maryland, this 25th day of March 1986.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Acting Director, Division of PWR Licensing-A, Office of Nuclear Reactor Regulation.

LICENSEE'S ADDITIONAL COMMITMENT ON SUPPLEMENT 1 TO NUREG-0737, PORTLAND GENERAL ELECTRIC COMPANY

Title	Requirements	Licensee's completion schedule (or status)
3. Regulatory guide 1.97—Application to emergency response facilities	3.b Implement (installation or upgrade) requirement	1987 refueling outage estimated to end Aug. 1, 1987.

[FR Doc. 86–7284 Filed 4–1–86; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Waste Management; Meeting

The ACRS Subcommittee on Waste Management will hold a meeting on April 24 and 25, 1986, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, April 24, 1986–8:30 a.m. until the conclusion of business

Friday, April 25, 1986–8:30 a.m. until the conclusion of business

The Subcommittee will review various topics in the High-Level Radioactive Waste Programs. Topics currently identified for review at the April meeting are: (1) Modeling Strategy for HLW performance assessment, (2) Quality Assurance (addressing safety issues of geologic repositories), (3) the NRC LLW program, (4) several research efforts, including international programs and cooperative agreements, results of modeling workshop, setting priorities for HLW research, and LLW shallow land burial (SLB) alternatives; and (5) the Salvaging of Contaminated Smelted Alloys.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the intitial portion of the meeting, the Subcommittee may exchange preliminary views regarding matters to be considered during the balance of the meeting. The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff members, Mr. Owen S. Merrill (telephone 202/634–1413) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: March 27, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86–7289 Filed 4–1–86; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on April 10–12, 1986, in Room 1046, 1717 H Street, NW., Washington, DC. Notice of this meeting was published in the **Federal Register** on march 25, 1986.

Thursday, April 10, 1986

8:30 A.M.–8:45 A.M.: Report of ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest to the Committee.

8:45 A.M.–10:15 A.M.: McGuire Nuclear Power Station (Open/Closed)—The members will hear and discuss the proposed removal of the upper head injection system. Representatives of the NRC Staff and the Licensee will make presentations and participate in the discussion, as appropriate.

Portions of this session will be closed as required to discuss Properietary Information applicable to this matter.

10:30 A.M.–12:30 P.M.: Advanced Reactor Designs (Open/Closed)—The members will hear and discuss features of advanced reactor designs being developed by DOE. Representatives of the NCR Staff and of DOE will make presentations and participate in the discussion, as appropriate.

Portions of this session will be closed as necessary to discuss applicable Proprietary Information.

1:30 P.M.–3:00 P.M.: Reactor Operators (Open/Closed)—The members will hear and discuss a report of its Subcommittee concerning recent incidents and events at operating nuclear power plants.

Portions of this session may be closed as necessary to discuss Proprietary Information or detailed security information pertaining to the facilities being discussed.

3:15 P.M.–5:15 P.M.: Quantitative Safety Goals (Open)—The members will discuss proposed methods of

implementing the NRC's quantitative safety goals.

5:15 P.M.–5:45 P.M.: Future ACRS Activities (Open)—The members will discuss anticipated ACRS subcommittee activities. Topics proposed for consideration by the full Committee will also be discussed.

5:45 P.M.–6:45 P.M.: Decay Heat Removal (Closed)—The members will discuss a proposed decay heat removal system.

This session will be closed to discuss Proprietary Information related to this topic.

Friday, April 11, 1986

8:30 A.M.–9:00 A.M.: Reliability of Nuclear Components (Open)—The members will hear a report by the Subcommittee on Reliability Assurance.

9:00 A.M.–9:45 A.M.: Preparation for Meeting with NCR Commissioners (Open)— The members will discuss the subjects of the meeting to be held with the NRC Commissioners.

10:00 A.M.–11:30 A.M.: Meeting with NRC Commissioners (Open)—The members of the ACRS will meet with the NRC Commissioners to discuss the scope and priorities of ACRS activity, the design of the GESSAR II and safety considerations for future plants, and a proposed Federal academy for training nculear power plant personnel.

11:45 A.M.–12:30 P.M.: Quantification of Health Effects in Probabilistic Risk Assessments (Open)—The members will discuss the quantification in PRA of health effects and public risk.

1:30 P.M.–2:45 P.M.: Human Factors (Open)—The members will hear a report of recent activities of the Subcommittee on Human Factors.

2:45 P.M.–4:45 P.M.: Quantitative Safety Goals (Open)—the members will continue the discussion of implementation of the NRC's quantitative safety goals.

5:00 P.M.–6:30 P.M.: Subcommittee Activities (Open)—The members will hear reports of ACRS Subcommittee activities concerning auxiliary feedwater system reliability, resolution of USI A–45, and LWR standard plant design.

Saturday, April 12, 1986

8:30 A.M.–9:00 A.M.: Nomination of New Member (Closed)—The members will hear a report of the screening panel on nomination of a candidate for appointment to the Committee.

This session will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

9:00 A.M.–12:00 Noon: Preparation of ACRS Reports (Open/Closed)—The members will discuss ACRS reports on Quantitative Safety Goals, the McGuire Nuclear Station, and Quantification of Health Effects in PRAs.

Portions of this session will be closed as necessary to discuss Proprietary Information.

1:00 P.M.–1:30 P.M.: ACRS Bylaws (Open)—The members will discuss a proposed change in the ACRS Bylaws.

1:30 P.M.–1:45 P.M.: Hearing on 1986 Ohio Earthquake (Open)—The members will hear a report concerning a Congressional hearing on the 1986 Ohio Earthquake and its effects.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 2, 1985 (50 FR 191). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Us of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R.F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director is such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss Proprietary Information (5 U.S.C. 552b(c)(4)), detailed security information (5 U.S.C. 552b(c)(3)), and information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr.Raymond F. Fraley (telephone 202/634–3265), between 8:15 A.M. and 5:00 P.M.

Dated: March 28, 1986.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 86–7291 Filed 4–1–86; 8:45 am]

BILLING CODE 7590–01–M

Report to the NRC on Guidance for Preparing Scenarios for Emergency Preparedness Exercises at Nuclear Generating Stations

The Nuclear Regulatory Commission (NRC) has issued a report, NUREG/CR–3365, (Draft Report for Comment) "Guidance for Preparing Scenarios for Emergency Preparedness Exercises at Nuclear Generating Stations." The handbook was prepared to assist emergency planners in developing scenarios for emergency preparedness exercises. The handbook provides guidance for the development of the objectives of an exercise, the descriptions of scenario events, the instructions to participants, and the implementation of the scenario events. Public comments are being solicited on Draft NUREG/CR–3365. Comments should be sent to John Philips, Chief, Rules and Procedures Branch, Room 4000 MNBB, Washington, DC 20555, by June 2, 1986. The agency contact is Edward M. Podolak, Jr., Senior Emergency Preparedness Specialist, telephone: 301/492–7290.

Draft NUREG/CR–3365 is available for inspection and copying at the NRC Public Document Room 1717 H Street, Washington, DC. Copies may be obtained by calling (202) 275–2060 or writing the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7982.

Dated this 27 day of March 1986.

For the Nuclear Regulatory Commission.

Edward L. Jordan,

Director, Division of Emergency Preparedness and Engineering Response, Office of Inspection and Enforcement.

[FR Doc. 86–7287 Filed 4–1–86; 8:45 am]

BILLING CODE 7590–01–M

Intent To Establish a Federally Funded Research and Development Center

Note.—The following document was originally published on Tuesday, March 11, 1986, at page 8383. It is being republished at the request of the agency.

ACTION: Notice of intent.

SUMMARY: The Nuclear Regulatory Commission (NRC) announces that it is considering the establishment and sponsorship of a Federally Funded Research and Development Center (FFRDC) for waste management technical assistance and research as a potential solution to problems of conflict of interest and continuity of technical assistance. A draft of certain elements of the solicitation package is available for public comment. The package includes a draft statement of work for operating the Center, draft proposal instructions and evaluation criteria, and mandatory requirements. The Commission is also requesting comments on specific questions included in this package. The Commission has not made a commitment to sponsor the FFRDC. Final approval by the Commission will be subject to review of the responses to this Notice and to finding a highly qualified contractor to manage and operate the FFRDC.

DATE: Comment period expires April 24, 1986.

ADDRESSES: A draft of certain elements of the solicitation package is available for public inspection and copying at the U.S. Nuclear Regulatory Commission, Public Document Room, 1717 H Street, NW., Washington, DC 20555, telephone 202/634–3273. Copies can also be obtained from the Division of Contracts, Room 2223, 4550 Montgomery Avenue, Bethesda, MD 20814; or will be mailed upon written request to the Division of Contracts, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Ms. Mary Mace, Contract Negotiator. Comments should be submitted to the address immediately above.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Mace, Contract Negotiator, Division of Contracts, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301/492–4282).

SUPPLEMENTARY INFORMATION:

Background

Under the Nuclear Waste Policy Act of 1982 (NWPA), the U.S. Nuclear Regulatory Commission (NRC) is responsible for licensing the construction, operation, and closure of facilities required for a high-level radioactive waste disposal system, which are to be designed, constructed, operated, and closed by the U.S. Department of Energy (DOE). The facilities of the DOE waste disposal system will include mined geologic repositories; monitored retrievable storage (MRS) facilities or other interim storage measures; and transportation vehicles, casks and handling equipment.

NRC's high-level waste licensing program currently faces two critical problems with respect to contracted technical assistance and research. First, the continued use of contractors who also have a contractual relationship with DOE's high-level waste program, or with any other party who might be a participant in NRC's high-level waste licensing hearings, may give rise to an organizational conflict of interest situation, and may draw into question the independence and freedom from bias of the contractors' work and, consequently, of NRC's licensing decisions. According to the definition in 41 CFR 20–1.54, and "organizational conflict of interest" means that:

> ". . . A relationship exists whereby a contractor or prospective contractor has present or planned interests related to the work to be performed under an NRC contract which (1) may diminish its capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product, or (2) may result in its being given an unfair competitive advantage."

Second, the long-term continuity of NRC's waste management technical assistance and research program over the next twenty years or more is threatened as a result of efforts to avoid organizational conflict of interest situations (contractors are required to choose between doing work for NRC's program or for DOE's much larger program) and by the possible recompetition of technical work. The loss of contractor expertise has a significant impact to NRC's technical program because of its evolving nature and NRC's need for contractor experts to appear as expert witnesses at adjudicatory hearings.

In light of the problems discussed above, the NRC believes that the long-term contractual support offered by a Federally Funded Research and Development Center (FFRDC) for waste management technical assistance and research is a potential solution for providing the special long-term contractual relationship needed by NRC in order to alleviate potential conflict of interest situations and provide long-term continuity.

Notice of Intent

This Notice of Intent indicates that NRC is considering the establishment and sponsorship of an FFRDC for waste management technical assistance and research as a solution to the problems of conflict of interest and long-term continuity. The FFRDC would be entitled, "The Center for Nuclear Waste Regulatory Analyses" (hereinafter referred to as the "Center"). The publication of this Notice of Intent, however, is not a commitment on the part of NRC to establish and sponsor an FFRDC. Any final decision to do so must be approved by the Commission and be in compliance with Office of Federal Procurement Policy (OFPP) Letter No. 84–1, "Federally Funded Research and Development Centers" (April 4, 1984).

Technical assistance and research tasks to be performed by the Center would encompass the following general areas: (1) Waste systems engineering and integration; (2) long-term performance of a geologic setting; (3) long-term performance of an engineered barrier system; (4) performance of an MRS and repository during operation; (5) special analytical evaluations; and (6) transportation, environmental impacts and other areas related to the Nuclear Waste Policy Act.

The period of performance for the Center would extend throughout the duration of NRC's high-level waste licensing responsibilities estimated to be twenty years or more). The period of performance for the contract to manage and operate the Center would be for five years (to be renewed every five years, subject to comprehensive review by the NRC). The level of effort for the first five years would build up from about 20–25 staff years during the first year to about 50 staff years during the fifth year and may increase by up to 50%, depending on program development and appropriations availability. ("Staff years" includes direct staff plus support staff.)

The NRC screening criteria for the Center are: (1) No conflict of interest with the high-level waste program; (2) operation of the Center as a not-for-profit organization free of control by any organization whose affiliations could give rise to conflict of interest; (3) capability to provide long-term continuity in resources to NRC throughout the duration of its high-level waste program under NWPA (e.g., 20 years or more); (4) multi-disciplined staff; (5) access to existing equipment and facilities (e.g., computational and experimental laboratories); (6) expertise in the areas of technical assistance and research identified above; and (7) capability to provide testimony by expert staff during NRC adjudicatory hearings.

A draft of certain elements of the solicitation package is available for public comment. The package includes a draft statement of work for operating the Center, draft proposal instructions and evaluation criteria, and mandatory

requirements. The Commission is also requesting comments on specific questions included in this package. Final Commission approval to issue a solicitation package will be subject to review of the public comments on this draft solicitation package. Final Commission approval to establish and sponsor the Center will be subject to finding a highly qualified contractor to manage and operate the Center.

Dated at Bethesda, Maryland, this 6th day of March, 1986.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Acting Executive Director for Operations.

[FR Doc. 86-5266 Filed 3-10-86; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-15017; File Nos. 811-3812 and 811-3784]

Application and Opportunity for Hearing; CNA Growth Stock Fund, Inc. and CNA Bond Fund, Inc.

March 27, 1986.

Notice is hereby given that CNA Growth Stock Fund, Inc. and CNA Bond Fund, Inc. ("Applicants"), CNA Plaza, Chicago, Illinois 60685, registered under the Investment Company Act of 1940 ("Act") as open-end, diversified management investment companies, filed applications on March 4, 1986, pursuant to Section 8(f) of the Act, for an order of the Commission declaring that Applicants have ceased to be investment companies. All interested persons are referred to the applications on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act and the rules thereunder for the text of the applicable provisions.

On June 22, 1983, CNA Growth Stock Fund, Inc. filed a notification of registration on Form N-8A, and on June 27, 1983 filed a registration statement on Form N-1. CNA Bond Fund, Inc. filed a notification of registration on Form N-8A on June 17, 1983 and a registration statement on Form N-1 on June 30, 1983. Each Applicant was incorporated under the laws of the State of Maryland.

Neither registration statement on Form N-1 became effective and, therefore, no public offerings were commenced. According to the applications, each Applicant has one shareholder. CNA Growth Stock Fund, Inc. sold securities to its sole stockholder for $100,000 cash, and issued additional shares in the amount of $20,615.36 for reinvestment of cash dividends, as of the date of the application, the stockholder had received $115,839.36 for shares redeemed in connection with the winding-up of CNA Growth Stock Fund. CNA Bond Fund, Inc. sold securities to its sole stockholder for $100,000 cash, and issued additional shares in the amount of $20,547.36 for reinvestment of dividends. As of the date of the application, the stockholder had received $115,839.36 for shares redeemed in connection with the winding-up of CNA Bond Fund. Each Applicant states that it currently has less than $6,000 to meet any anticipated liabilities (with the balance to be given to its securityholder in exchange for the redemption of its shares) and has no debts outstanding. The Applicants are not party to any litigation or administrative proceedings. Applicants maintain that they are not engaged, nor do they propose to engage, in any business activities other than those necessary for the winding up of their affairs.

Notice is further given that any interested person wishing to request a hearing on the applications may, not later than April 21, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the applications will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-7292 Filed 4-1-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15018; File No. 812-6227]

Principal World Fund, Inc., et al.; Notice of Exchange Offer Application

March 27, 1986.

Notice is hereby given that Principal World Fund, Inc. ("World Fund"), Principal Equity Fund, Inc. ("Equity Fund"), Principal Arizona Tax-Free Fund, Inc. (formerly, American Pioneer Arizona Tax-Free Securities Fund, Inc.) ("Tax-Free Fund") (the "Funds") and Principal Investors Corporation ("PIC") (collectively, "Applicants") 6310 North Scottsdale Road, Scottsdale, Arizona 85253, filed an application on October 17, 1985, and amendments thereto on November 12, 1985, January 23, February 26, and March 14, 1986, for an order of the Commission, pursuant to section 11(a) of the Investment Company Act of 1940 (the "Act"), permitting the funds and any future open-end investment companies for which PIC serves as principal underwriter or distributor to participate in certain offers of exchange described herein. All interested persons are referred to the application on file with the Commission for the statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

Applicants state that the Funds are registered under the Act as open-end management investment companies, and that PIC maintains a continuous public offering of the shares of each of the Funds at their respective net asset values, plus a sales charge. Applicants also state that they will not solicit shareholders of the Funds with respect to the exchange option with a view to churning shareholder accounts.

According to the application, shares of any Fund may be exchanged for (a) shares of any other Fund with an equivalent, lower or no sales charge on the basis of the relative per share net asset values of the respective Funds at the time of the exchange without a sales charge, or (b) shares of any other Fund with a higher sales charge on the basis of relative per share net asset values of the respective Funds at the time of the exchange plus the difference between the sales charge applicable to the Fund whose shares are being acquired and the sales charge previously paid with respect to the shares being exchanged. Applicants state that shares of any Fund acquired through reinvestment of dividends and capital gains distributions may be exchanged for shares of any other Funds on the basis of the relative per share net asset values of the respective Funds at the time of the exchange without a sales charge. Applicants state that where shares of a Fund have been acquired by exchange from a Fund having a higher sales charge, the higher sales charge shall be considered to have been previously paid in determining whether any additional sales charge is payable in the event such shares are further exchanged for shares of another Fund.

Applicants represent that where fewer than all of a stockholder's shares are exchanged, those for which no or a lower additional sales charge would be payable will be exchanged first. Also, rights of accumulation and other arrangements described in the respective prospectuses allowing for reduced sales charges are applied to determine the sales charge applicable to shares of a Fund being acquired by exchange.

Applicants assert that the purpose of the proposed exchanged offer is to permit a shareholder of any of the Funds whose investment objective changes to transfer that investment to a different investment company and receive credit for any sales charge previously paid. Applicants submit that the proposed offers of exchange provide an equitable basis for an exchange of shares which does not discriminate unjustly against any class of investors. Applicants also submit that the proposed exchanges at a reduced sales charge will be beneficial to all shareholderes because a person desiring to dispose of shares of a Fund and acquire shares of another Fund may wish to do so for a number of reasons, such as changes in his or her particular investment goals or requirements or in order to take advantage of possible tax benefits flowing from the exchange.

Applicants represent further that an exchanging stockholder will be charged an administrative fee of $25.00 by the transfer agent of the Fund whose shares are being acquired. Applicants state that Principal Mangement, Inc. is the Funds' investment adviser (the "Adviser") and it will provide transfer agency services. Applicants further state that the Adviser has not done a specific cost accounting analysis of the expenses relating to an exchange transaction utilizing the administration fee; however, the Adviser considers such fee to be reasonable and appropriate given the activities required to process the exchange transactions, as listed in the application. Applicants further represent that the Adviser is of the opinion that the $25.00 charge for the administration fee in no way constitutes excessive compensation to the Adviser for the services rendered.

Finally, Applicants assert that a stockholder may also chose to redeem the shares of one Fund and acquire those of another Fund without utilizing the exchange privilege. In that case, the administrative fee may be thus avoided, but the separate transactions may take longer to accomplish if, for example, the stockholder waits to receive his or her redemption proceeds check from the first Fund before investing an equal amount in the second Fund. Applicants state that a no load "credit" will be available in switching when this manner.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 21, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-7299 Filed 4-1-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24057]

Filings Under the Public Utility Holding Company Act of 1935 ("Act"); Seagull Energy Corp. et. al.

March 27, 1986.

Notice is hereby given that the following filing(s) has been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto are available for public inspection through the Commission's Office of Public Reference.

Interested person wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 21, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit, or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Seagull Energy Corporation (31-811)

Seagull Energy Corporation ("Seagull"), 1700 First City Tower, Houston, Texas 77002, has filed an application with this Commission pursuant to section 2(a)(8) of the Act requesting an order declaring Seagull not to be a "subsidiary company" of Finial Investment Corporation ("Finial").

Seagull is an independent company, engaged primarily in the transportation of natural gas in interstate commerce; gas processing; transportation of petroleum products and petro chemicals; and oil and gas exploration, development and production. Seagull's common stock is registered pursuant to section 12(b) of the Securities Exchange Act of 1934 and is listed on the New York Stock Exchange. As of February 14, 1986, 6,407,116 shares of the common stock of Seagull were issued and outstanding and such shares were owned of record by 7,843 persons. Finial, a Texas corporation, owns 916,000 shares of Seagull's common stock, representing 14.3% of Seagull's outstanding shares. However, Finial does not own the requisite number of shares to elect a director of Seagull on its own, to break a quorum or to block a merger or similar transaction.

Seagull was not a public utility company within the meaning of the Act at the time its application was filed. However, Seagull has since then acquired all the shares of Alaska Pipeline Company and all of the gas distribution assets of the Alaskan natural gas distribution division of ENSTAR Corporation ("ENSTAR"), a gas utility company within the meaning of section 2(a)(4) of the Act. Upon its acquisition of those assets of ENSTAR, Seagull became a gas utility company under the Act. At that time, Seagull became a subsidiary company of a holding company (Final) by virtue of seciton 2(a)(8)(A) of the Act.

General Public Utilities Corporation (70-7227)

General Public Utilities Corporation ("GPU"), 100 Interpace Parkway, Parsippany, New Jersey has filed a declaration pursuant to section 12(b) of the Act and Rule 45 thereunder.

GPU requests authorization to make cash capital contributions to its

subsidiary, Metropolitan Edison Company, in an aggregate amount of up to $50 million from time to time through December 31, 1987.

General Public Utilities Corporation (70–7228)

General Public Utilities Corporation ("GPU"), 100 Interpace Parkway, Parsippany, New Jersey 07054, a registered holding company, has filed an application with this Commission pursuant to sections 9(a) and 10 of the Act.

GPU proposes to acquire 51,975 shares of common stock of ACE Limited ("Holdings"), a Cayman Islands corporation, for a purchase price of $100 per share, or an aggregate purchase price of $5,197,500. Holdings owns all of the common stock of A.C.E. Insurance Company, Ltd. ("ACE"), a Cayman Islands insurance company organized to underwrite general liability and directors' and officers' liability insurance coverage in response to the general shrinkage of world insurance capacity. As a Cayman Islands company, ACE will not be an admitted or licensed insurer in the United States and is expected to be subject to U.S. insurance regulations only insofar as they may apply to unlicensed alien insurers.

GPU desires to become a participant in ACE in order to replace amounts of liability insurance no longer available to the GPU System. In order to obtain insurance from ACE, each nonsponsor policyholder must subscribe for shares of Holding's common stock in an amount equal to a percentage of the policyholder's gross first-year premium. While dividends and other distributions may be made at the discretion of Holding's board of directors, it is not anticipated that dividends will be paid in the near future. GPU states that it expects that its proposed ownership interest in Holdings will not exceed 3% of the voting stock outstanding at any one time. As a participant in ACE, GPU's liability would be limited to its capital investment in Holdings in the event that ACE incurs underwriting losses in excess of accumulated capital and surplus.

Indiana & Michigan Electric Company, et al. (70–7231)

Indiana & Michigan Electric Company ("I&M"), an electric utility subsidiary of American Electric Power Company, Inc. ("AEP"), a registered holding company, and Blackhawk Coal Company ("Blackhawk") and Price River Coal Company, Inc. ("Price River"), coal mining subsidiaries of I&M, have filed an application declaration with this Commission pursuant to sections 9(a), 10 and 12(d) of the Act and Rule 45 thereunder.

Blackhawk and Price River propose to transfer their coal mining operations with respect to the Western Reserves to Castle Gate Coal Company ("Castle Gate") and Meadowlark, Utah, Inc., subsidiaries of AMAX, Inc. This transfer is to be accomplished by means of a set of transactions involving leases, subleases, conveyances and assignments with respect to the various surface interests, fee coal, coal preparation facilities, federal and state leases, structures, equipment, permits and water rights associated with the Western Reserves, and is to be consummated by December 31, 1986.

As part of the proposed transactions, I&M will undertake to guarantee unconditionally the complete and punctual performance by Blackhawk and Price River of all of the terms and conditions to be performed or satisfied by Blackhawk and Price River as part of the proposed transactions, and Blackhawk and Price River will acquire a note in the amount of $5,855,000.

Southwestern Electric Power Company (70–7233)

Southwestern Electric Power Company ("Swepco"), P.O. Box 21106, Shreveport, Louisiana 71156, an electric utility subsidiary of Central and South West Corporation, a registered holding company, has filed a declaration with this Commission pursuant to sections 6(a) and 7 of the Act and Rule 50 thereunder.

Swepco proposes to issue and sell up to $65,000,000 of its First Mortgage Bonds (the "New Bonds") in one or more series with a maturity of up to 30 years at competitive bidding. Proceeds of the offering of the New Bonds will be used to redeem the outstanding $60,000,000 of Swepco's First Mortgage Bonds, Series P, 11-7/8%, due January 1, 2010 (the "Series P Bonds") at the general redemption price of 109.42% of principal amount plus accrued and unpaid interest to the redemption date. Additional funds required for such redemption will be paid from internally generated funds or short-term borrowings.

Public Service Company of Oklahoma (70–7234)

Public Service Company of Oklahoma ("PSO"), 212 East 6th Street, Tulsa, Oklahoma 74119, an electric utility subsidiary of Central and South West Corporation, a registered holding company, has filed a declaration with this Commission pursuant to section 6(b) of the Act and Rule 50 thereunder.

PSO proposes to issue and sell up to $100,000,000 of its First Mortgage Bonds, Series R, (the "New Bonds") through December 31, 1986, by competitive bidding in one or more series, having an expected interest rate of 8.25%, with up to a 30-year maturity period. Proceeds from the offering of the New Bonds will be used to redeem the outstanding $55,000,000 of the Company's First Mortgage Bonds, Series P, 11-3/8%, Due December 1, 2009 at the general redemption price of 108.86% of principal amount plus accrued and unpaid interest to the redemption date and to fund, in part, the premium on the redemption of PSO's 8.88% preferred stock. Any proceeds not used for such redemptions will be used for the payment of outstanding short-term borrowings incurred and expected to be incurred to finance construction expenditures and other corporate purposes.

West Texas Utilities Company (70–7237)

An application-declaration has been filed pursuant to Sections 6(a), 7, 9(a), 10 and 12(c) of the Act and Rule 50 by West Texas Utilities Company, ("WTU"), 301 Cypress, Abilene, Texas 79601, a subsidiary of Central and South West Corporation, a registered holding company.

WTU proposes to issue and sell $75 million of its first mortgage bonds by competitive bidding. The proceeds will be used to repurchase for cash by tender offer, up to $60 million of its outstanding bonds in two series. It is estimated that the tender offer will be 117% and 121% of principal, plus accrued interest for the Series K and L bonds, respectively.

General Public Utilities Corporation, et al. (70–7241)

General Public Utilities Corporation ("GPU"), a registered holding company, and GPU Service Corporation ("Service Company"), the GPU system service company, 100 Interpace Parkway, Parsippany, New Jersey 07054, have filed a declaration pursuant to sections 6(a), 7, and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

Service Company proposes to issue to Aetna Life Insurance Company or one or more of its insurance affiliates $32,000,000 aggregate principal amount of Service Company's secured notes. The secured notes will bear annual interest at 10.87%, payable semi-annually, will mature not later than December 31, 2001, and will be secured by a first mortgage lien on and security interest in Service Company's Reading Pennsylvania office building (including the land, furniture, and fixtures). It is

also proposed that GPU unconditionally guarantee Service Company's payment of principal and interest on and performance of its other obligations with respect to the secured notes. An exception from the competitive bidding requirements of Rule 50 has been requested. Service Company will use the net proceeds from the issuance of the secured notes to repay its outstanding notes to banks, aggregating approximately $28,000,000, to repay Service Company's outstanding $3,700,000 indebtedness to GPU, and to add to Service Company's working capital.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-7293 Filed 4-1-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15019; 812-6307]

ML Venture Partners I, L.P., et al.; Application

March 27, 1986.

Notice is hereby given that ML Venture Partners I, L.P. ("Partnership"), Merrill Lynch Venture Capital, Inc. ("Management Company"), the management company for the Partnership, 717 Fifth Avenue, New York, NY 10022, and Merrill Lynch KECALP L.P. 1986 ("KECALP" and, together with Partnership and Management Company, "Applicants"), 165 Broadway, One Liberty Plaza, New York, NY 10080, filed an application on February 21, 1986, for an order of the Commission: (1) pursuant to section 57(a)(4) of the Investment Company Act of 1940 ("Act"), and Rule 17d-1 thereunder, permitting the concurrent investment by the Partnership and KECALP in convertible preferred stock issued by Dallas Semiconductor Corporation ("Dallas Semiconductor"); and (2) pursuant to sections 17(b) and 57(c) of the Act, exempting from the provisions of Sections 17(a)(1) and 57(a)(1) of the Act, the proposed sale of preferred stock of Dallas Semiconductor by the Manage-Company to KECALP and the Partnership. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the applicable statutory provisions.

The Partnership was formed as a limited partnership under Delaware law in 1982. it has elected to be treated under the Act as a business development company, and has as its investment objective long-term capital appreciation through venture capital investments. The Partnership has five general partners, four of which are natural persons (referred to hereinafter as "Individual General Partners"). The Partnership's managing partner is Merrill Lynch Venture Capital Co., L.P. ("Managing General Partner"), and the general partner of the Managing General Partner is the Management Company. The Management Company is an indirect subsidiary of Merrill Lynch & Co., Inc. ("ML&Co"), a holding company which, through subsidiaries, provides investment, financing, real estate, insurance and related services. At December 31, 1985, the Partnership had net assets of approximately $65 million.

Applicants further state that KECALP, an employees' securities company as defined in Section 2(a)(13) of the Act, is a limited partnership, registered under the Act as a closed-end, non-diversified management company, having as its investment objective long-term capital appreciation together with the tax advantages resulting from certain investments. KECALP's Registration Statement under the Securities Act of 1933 became effective on January 10, 1986, in accordance with which KECALP is offering up to $25 million of limited partnership interests. The minimum amount required to be raised in this offering is $2 million, and the offer is being made exclusively to those employees of ML&Co and its subsidiaries having annual compensation in 1985 of at least $75,000, and to non-employee directors of ML&Co. It is further stated that KECALP operates in accordance with the terms of an exemptive order issued pursuant to Section 6(b) of the Act on April 8, 1982 (Investment Company Act Release No. 12363) ("KECALP Exemptive Order"). For a further description of KECALP and its operations, see Investment Company Act Release No. 12290, March 11, 1982.

It is further stated that Dallas Semiconductor, formed in 1984, is engaged in developing metal oxide semiconductor integrated circuits. Pursuant to a Stock purchase agreement dated February 7, 1986, Dallas Semiconductor sold 8,346,152 shares of Class C Preferred stock for a purchase price of $1.30 per share. The Management Company purchased an aggregate of 538,462 shares of Dallas Semiconductor Series C Preferred Stock. 384,616 shares were purchased on behalf of the Partnership, and the balance of 153,846 shares were acquired on behalf of KECALP. Applicants state that these shares were acquired by the Management Company because KECALP has not yet closed its initial offering and has no funds to purchase the investment and because there is a question under section 57(a) of the Act and Rule 17d-1 thereunder as to whether the Partnership and KECALP could co-invest in the Dallas Semiconductor offering without an order permitting such participation. To the knowledge of Applicants, no other investor in such offering is an affiliated person of ML&Co.

Applicants further state that the purchase price for the shares of Dallas Semiconductor proposed to be acquired by the Partnership represents less than one percent of its assets, and will represent a maximum of 10 percent of the assets of KECALP if KECALP raises only the minimum required in its initial offering. The terms of the proposed acquisitions will be identical in all respects.

It is further represented that, with respect to the terms of the transactions, the General Partner of KECALP and the Managing General Partner of the Partnership have reviewed the proposed investments on behalf of KECALP and the Partnership, respectively. All information deemed relevant, including the nature of the investments and the fairness of the purchase prices proposed to be paid by KECALP and the Partnership were considered in detail, it is stated. More specifically, it is stated that the Individual General Partners reviewed the proposed investments at a meeting held on February 4, 1986. Among the factors taken into account was the fact that the terms of the purchase by the Partnership of shares of Dallas Semiconductor will be no less favorable than the terms on which KECALP makes its purchase. The Individual General Partners also concluded that the Partnership would not be disadvantaged in any manner by the participation of KECALP in the proposed transaction.

KECALP's general partner also reviewed the proposed investment in Dallas Semiconductor. The investment committee of the general partner determined that such investment would be consistent with KECALP'S investment objective of seeking long-term capital appreciation, and that the proposed investment would not disadvantage KECALP in making such investment, maintaining its investment positions, or disposing of such position.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 22, 1986, at 5:30 p.m., do so by submitting a written request setting

forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-7294 Filed 4-1-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Order Granting Application To Strike From Listing and Registration; New York Stock Exchange, Inc., et al.

March 26, 1986.

In the matter of New York Stock Exchange, Inc.; New England Telephone and Telegraph Company (File No. 1-1150 (7 debt issues), New York Telephone Company (File No. 1-3435) (15 debt issues); South Central Bell Telephone Company (File No. 1-6507) (11 debt issues); Southern Bell Telephone and Telegraph Company (File No. 1-1049) (11 debt issues); and Southwestern Bell Telephone Company (File No. 1-2346) (14 debt issues).

Summary

On September 17, 1985, the Commission received from the New York Stock Exchange, Inc. ("NYSE" of "Exchange") an application filed pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2 under the act to strike 58 debt issues ("bonds") from listing and registration at the opening of the trading session on September 30, 1985 [1] ("delisting application"). On March 17, 1986, the NYSE filed with the Commission an amended application providing that the delisting of the bonds would be effective at the opening of trading on March 31, 1986. The NYSE states that it is striking the bonds from listing and registration because the above issuers have not paid the Exchange annual fees which were required by the NYSE for continued listing of the bonds. For the reasons discussed below, the Commission has granted the NYSE's application.

I. Background

On listing the above-indexed 58 bond issues, the five companies ("issuers") paid a speficied, original listing fee under the then existing NYSE fee schedule which provided that "[t]here is no continuing annual fee for bonds and similar securities." On February 27, 1981, however, the Commission approved an amendment to the NYSE's fee schedule, effective January 1, 1981, providing for an annual listing fee in addition to an amended, original listing fee applicable to all NYSE listed bonds.[2] Subsequently, the NYSE again amended its fee schedule to eliminate the annual listing fee for bonds and impose a higher original listing fee, effective January 1, 1985.[3] The NYSE indicated, however, that the revised fee schedule was not retroactive in application and that the issuers who failed to pay the annual fees during the period such fees were in effect, *i.e.*, from January 1, 1981 to December 31, 1984, still were obligated to pay those fees.

The NYSE states that, on March 27, 1985, the Exchange advised the issuers that "unless the outstanding bond annual fees [were] paid, the Exchange would take delisting action" regarding the bonds.

The Exchange stated that it then was advised by the issuers that they would not pay the outstanding listing fees.

According to the NYSE, on June 28, 1985, it notified the issuers that the bonds would be suspended from Exchange dealings during the week of July 1, 1985.[4] The Exchange stated that further dealings were suspended in the bonds before the opening of trading on July 5, 1985, and that "[a]ppropriate advance public notice thereof was given on the Exchange's Bond Ticker. . . ." [5]

On September 17, 1985, the NYSE filed with the Commission an application to strike the bonds from NYSE listing and registration.

II. Comments Regarding the Proposed Delisting

The Commission received four comment letters regarding the proposed delisting, one from an issuer—BellSouth Corporation—[6] and three from holders of the debt issues.[7]

BellSouth stated that its decision to list its bond issues on the NYSE was made "in reliance on the fact that there was no recurring listing fee." BellSouth contended that the NYSE's adoption of "[a] maintenance charge clearly furthers neither of [the] purposes" of "the protection of the market or the investor."

In addition, BellSouth stated that, even if the fees were not improper, payment of an annual bond listing fee is not required under existing NYSE rules so that BellSouth's bonds currently are not in violation of existing NYSE requirements and therefore not "unsuitable" for continued NYSE listing.[8] BellSouth also questioned whether the NYSE had "made an appraisal" of the bonds' suitability for continued listing, stating that "no reason whatsoever is propounded which suggests that these issues are unsuitable for listing." In addition, BellSouth stated that the NYSE had taken "no action" regarding collection of the fees during the four years the maintenance fee requirement was in effect. Further, BellSouth stated, if the fee was appropriate, "the NYSE's remedy . . . is to pursue the collection of a debt due, not the delisting of the company."

Each of the other three commentators ("bondholders") indicated that they had bought the BellSouth bonds in part because they were exchange listed. Each opined that delisting the bonds would result in inferior executions to those available if the bonds continued to be listed; one commentator cited

[1] *See* above-indexed list of debt issues.

[2] *See* Securities Exchange Act Release No. 17586 (February 27, 1981), 46 FR 15625. The listing fee schedule for bonds in effect prior to January 1, 1981, provided for payment of $120 per million principal amount for bonds with maturity of more than five years. Under the amended listing fee schedule for bonds effective January 1, 1981, the rate per million dollars of par value was $172 with a continuing annual fee of $10 per million dollars par value.

[3] *See* Securities Exchange Act Release No. 21635 (January 7, 1985), 50 FR 1664 (File No. SR-NYSE-84-36). Under the listing fee schedule for bonds, effective January 1, 1985, the initial fee per million dollars of par value was increased from $171 to $225 for issues with maturity greater than five years.

[4] According to the NYSE, the Exchange received no appeal of the trading suspension from the issuers during the 20 days period following the suspension of trading provided by Section 804 of the NYSE Listed Company Manual ("*Company Manual*").

[5] *See* letter from Vincent Plaza, Vice President, Marketing Group, NYSE, to Thomas Etter, Attorney, Division of Market Regulation, Commission, dated August 2, 1985.

[6] BellSouth's bonds were listed under the name of Southern Bell Telephone and Telegraph Company.

[7] *See* letters from O.K. Williamson, Vice President-Senior Financial Officer, BellSouth Corp., to Thomas Etter, Attorney, Commission, dated October 8, 1985; Kirk W. Robbins to John S.R. Shad, Chairman, Commission, dated July 12, 1985; Edgar A. Minton, to New York Regional Office, Commission, dated August 19, 1985; and David Gilden, to Thomas Etter, Attorney, Commission, dated September 12, 1985.

[8] BellSouth cited an NYSE Rule [Section 802 of the NYSe *Company Manual*] relied upon by the Exchange in its delisting application providing, in part, that the NYSE may "make an appraisal of the suitability for continued listing of an issue in the light of all pertinent facts. . . ." *See* note 11 *infra* and accompanying text.

difficulties encountered in obtaining quotations for the bonds. In addition, two of the bondholders suggested that, instead of delisting the bonds, the matter should be resolved through arbitration. Another contended that the NYSE could bring an action against the companies for the amount of the listing fee.

III. Discussion

In reviewing the NYSE delisting application, the Commission has considered the comments received in conjunction with its review of the applicable law. This section will first describe the Commission's findings with respect to the delisting application, and second, respond specifically to the comments.

A. Commission Finding Regarding the NYSE Delisting Application

Under section 12(d) of the Act and Rule 12d2–2 thereunder, if the Commission finds that the NYSE's action to delist the securities is in accordance with the NYSE's rules,[9] it will grant the NYSE's delisting application.[10]

In support of its application, the NYSE cites section 802 ("Continued Listing Criteria") of the NYSE *Company Manual* which provides that the Exchange may "make an appraisal of, and determine on an individual basis, the suitability for continued listing of an issue in light of all pertinent facts, whenever it deems such action appropriate, even though a security meets or fails to meet any enumerated criteria." [11] According to the NYSE, its determination to strike the bonds from continued listing pursuant to section 802 was based on the issuers' non-compliance with the NYSE fee schedule governing annual bond listing fees during the four year period the annual fee requirement was in effect. Under section 6(b)(4) of the Act, an exchange may require an issuer using exchange facilities to trade the issuer's securities to pay "reasonable," "equitabil[y] allocated" fees, and may enforce these rules by conditioning access on payment of such fees.[12] The Commission therefore finds the issuer's failure to pay annual listing fees to be within the purview of "pertinent facts" that the NYSE may consider under section 802 in determining a security's suitability for continued listing. Indeed, unless an exchange has the ability ultimately to delist an issuer that refuses to pay applicable fees, the exchange may have limited recourse against a recalcitrant issuer; the alternative of seeking a contractual remedy under the listing agreement may be both protracted and costly. In view of the Commission's role under paragraph (i) of the Rule 12d2–2 [13] and the NYSE's authority under section 802 of the *Company Manual* to determine whether certain "pertinent facts" warrant delisting a security, the Commission finds that the NYSE's action to delist the bonds is in accordance with the NYSE's rules and therefore is consistent with section 12(d) of the Act and Rule 12d2–2 under the Act.

B. Comments

Regarding the comments of BellSouth, the Commission notes that the amended listing fee schedule providing for continuing annual listing fees was not "impermissibly imposed," as BellSouth contends, but was approved by the Commission after notice and a period of public comment as being consistent with the Act and rules under the Act. [14] In addition, the facts that (1) the issuers currently are in compliance with existing NYSE fee requirements to the extent one-time initial listing fees were paid and (2) the NYSE previously took "no action" despite BellSouth's failure to pay annual listing fees, do not preclude NYSE action to delist the bonds under section 802 of the NYSE *Company Manual*. As indicated above, under section 802, the NYSE may base its determination regarding the bonds' continued listing on "all pertinent facts, conditions or events," which may include, as in the instant case, issuer non-compliance with prior listing fee requirements.

BellSouth also contends that in its application the NYSE did not make an "appraisal" of suitability for continued listing. As indicated above, however, the NYSE application cites the regulatory basis for its action—Section 802 of the NYSE *Company Manual*—and the factual basis underlying its application, *i.e.*, issuers' non-payment of NYSE listing fees. As described above, this information is adequate for the Commission to find, under section 12(d) of the Act and Rule 12d2–2 thereunder, that the NYSE delisting application made in response to the issuers' non-compliance with listing fee requirements was in accordance with NYSE rules.

In addition, all of the commentators contended that the NYSE should take alternative action in response to the issuers' non-payment of listing fees, rather than delist the bonds. Under section 12(d) of the Act, however, delisting is appropriate so long as the security is "stricken . . . from listing and registration in accordance with the rules of the exchange. . . ." The possible availability of alternative action does not preclude an exchange from acting under section 12(d) of the Act to delist a security.

Further, the three bondholders argued that the quality of the markets for the bonds will be diminished if the bonds were delisted on the NYSE. As an initial matter, the Commission does not believe that the quality of the markets in the

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[9] Section 12(d) provides "[a] security registered with a national securities exchange may be withdrawn or stricken from listing and registration in accordance with the rules of the exchange and, upon such terms as the Commission may deem necessary to impose for the protection of investors, upon application by the . . . exchange to the Commission. . . ."

Subsection (c) of Rule 12d2–2 provides, in pertinent part, that "a national securities exchange may file an application to strike a security from listing and registration, in accordance with its rules" and "[t]he Commission will enter an order granting such application on the date specified in the application . . . *provided, however*, that the Commission . . . may order a hearing to determine whether the application to strike the security from listing and registration has been made in accordance with the rules of the exchange, or what terms should be imposed by the Commission for the protection of investors."

[10] Regarding section 12(d), the Commission has noted that "[t]he Courts have held that the Commission may not refuse to grant a delisting application, but may impose only such terms as it deems necessary for the protection of investors; and in the case of a delisting application by an exchange the terms imposed have generally been limited to a delay of effectiveness of the order to allow settlement of outstanding contracts, etc." Securities Exchange Act Release No. 7011, 28 FR 1506 (1963) ("1963 release"). The 1963 release amended Rule 12d2–2 under the Act to establish, among other things, subsection (c), (*see* note 9 *supra*), indicating that, while the Commission may institute proceedings to review a delisting application, the decision regarding the appropriateness of delisting a security was the exchange's and such application would be granted if made in accordance with exchange rules.

[11] Further, the Exchange's appraisal under section 802 may be based on, "[a]ny other event or condition which may exist or occur" that makes further listing of the securities "inadvisable or unwarranted in the opinion of the Exchange."

Under section 802, such "enumerated" delisting criteria regarding bonds include the aggregate market value or principal amount of publicly-held bonds falling below $1,000,000.

[12] Section 6(b)(4) of the Act provides as follows: "An exchange shall not be registered as a national securities exchange unless the Commission determines that . . . [t]he rules of the exchange provide for the equitable allocation of reasonable dues, fees and other charges among . . . issuers . . . using its facilities."

[13] *See* notes 9–10 *supra*.

[14] Both amendments to the NYSE bond listing fee requirements were submitted to the Commission by the NYSE pursuant to section 19(b)(1) and (2) of the Act which provide for a period of public comment prior to the Commission's acting to approve or disapprove a proposed rule change. The Commission received no comments on either proposal. *See* Securities Exchange Act Release Nos. 17586 (February 27, 1981), 46 FR 15625 (File No. SR-NYSE–81–2) and 21635 (January 7, 1985), 50 FR 1664 (File No. SR-NYSE–84–36).

bonds will be significantly affected by the delisting.[15] The issuers may, of course, relist the bonds either on the NYSE or another exchange if they deem such action appropriate.[16] In any event, as noted above, to the extent an exchange has acted in accordance with its rules, the Commission is circumscribed in its review of a delisting application to considering whether steps, such as a delay in effectiveness of the order granting the delisting, are appropriate. In this instance, the NYSE's amended application has provided ample notice of the Exchange's intention to delist the 58 bond issues. No purpose would be served by additional delay.

The Commission, having considered the facts stated in the application and having due regard for the public interest and protection of investors, orders that said application be, and it hereby is, granted, effective at the opening of business on March 31, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-7189 Filed 4-1-86; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-8340]

Issuer Delisting; Application To Withdraw From Listing and Registration on the American Stock Exchange, Inc.

March 19, 1986.

The above name issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder to withdraw: (1) Warrants of Frontier Airlines, Inc. which expire March 1, 1987; (2) 5½% Subordinated Debentures of Frontier Airlines, Inc. due March 1, 1987; (3) 6% Convertible Subordinated Debentures of Frontier Airlines, Inc. due October 15, 1992; and (4) 10% Convertible Subordinated Debentures due September 1, 2007, of Frontier Holdings, Inc. ("Company"), from listing and registration on the American Stock Exchange, Inc. ("Exchange").

The reasons stated in the application for withdrawing this security from listing and registration include the following:

On November 22, 1985 (the "Effective Date"), PSE Acquisition Corporation, a wholly-owned subsidiary of People Express, Inc., a Delaware corporation ("People Express"), was merged (the "Merger") with and into Frontier. As a result of the Merger, Frontier became a wholly-owned subsidiary of People Express and holders of shares of Common Stock of Frontier became entitled to receive cash in the amount of $24 per share.

As of January 7, 1986, the number of record holders, amount outstanding and conversion of exercise price of each such class of securities were as follows:

Name of security	Number of record holders	Amount outstanding	Exercise/ conversion price
Warrants	701	265,334 warrants	$9.15.
5% debentures	355	$3,647,000 principal amount.	
6% convertible debentures	34	$2,157,000 principal amount.	$13.60/ share.
10% convertible debentures.	34	42,010,000 principal amount.	$25.73/ share.

The Board of Directors of Frontier has determined that, as the number of holders of each of such classes of securities is small and the trading market therein limited, the expense of the preparation and filing of periodic reports under the Exchange Act, including the cost of preparing audited financial statements of Frontier, is disproportionate to any benefit to the holders of such classes of securities. Frontier and People Express also believes that the continued preparation of such periodic reports places demands on the management of Frontier and People Express that are unnecessary under the circumstances.

Any interested person may, on or before April 9, 1985 submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary

[FR Doc. 86-7300 Filed 4-1-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

March 27, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

Morgan Stanely Group, Inc.

Common Stock, $1.00 Par Value (File No. 7-8885)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 17, 1986 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-7296 Filed 4-1-86; 8:45 am]

BILLING CODE 8010-01-M

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[15] The Commission notes that, in the past, the majority of trading in the issuers' bonds that are the subject of this application occurred over-the-counter and not on the NYSE. The Commission recognizes, however, that, if the companies do not list on another exchange, the investors will be deprived, as a practical matter, of obtaining last sale reports and quotation information for their bonds. In view of the many bonds which are traded exclusively over-the-counter without such information being available, the Commission does not believe that such a loss of information should preclude the NYSE from delisting the bonds.

[16] Southwestern Bell has relisted a number of the subject bonds on the American Stock Exchange, Inc. The remaining bonds are currently traded solely over-the-counter.

SMALL BUSINESS ADMINISTRATION

[Application No. 09/09-0368]

Peerless Capital Company, Inc.; Application for a Small Business Investment Company License

An application for a license to operate a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661, *et seq.*) has been filed by Peerless Capital Co., Inc. (Peerless), 2450 Mission Street, Suite 6, San Marino, CA 91108, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1986).

The officers, directors and major shareholders of the Applicant are as follows:

Robert W. Lautz, Jr., 2125 Linda Flora Drive, Bel Air, CA 90024.	President and Director	60 percent Shareholder
Thomas S. Benecke, 11959 Dorothy Street, Brentwood, CA 90049.	Chief Financial Officer and Director	40 percent Shareholder
William F. McKeary, 9750 Amanita Avenue, Tujunga, CA 91042.	Director.	

The Applicant, Peerless, a California Corporation will begin operations with $1,000,000 paid in capital and paid in surplus. Peerless will conduct its activities primarily in the State of California but will consider investments in businesses in other areas in the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" St., NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in San Marino, California.

(Catalog of Federal Domestic Assistance Program No. 591011, Small Business Investment Companies)

Dated: March 28, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-7311 Filed 4-1-86; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2234]

New York; Declaration of Disaster Loan Area

Saratoga County and the adjacent Counties of Albany, Fulton, Montgomery, Rensselaer, Schenectady and Washington constitute a disaster area because of flooding as a result of rain, unseasonably warm temperatures and excessive snow melt which began on March 14, 1986. Applications for loans for physical damage may be filed until the close of business on May 26, 1986, and for economic injury until the close of business on September 2, 1986, at the address listed below:

Area 1 Disaster Office, Small Business Administration, 15-01 Broadway, Fair Lawn, New Jersey 07410

or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 223406 for physical damage and for economic injury the number is 639700.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: March 26, 1986.

James C. Sanders,

Administrator.

[FR Doc. 86-7312 Filed 4-1-86; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2233; Amdt. #1]

Washington; Declaration of Disaster Area

The above-numbered declaration (51 FR 9912) is hereby amended in accordance with the President's major disaster declaration of March 19, 1986, to change the deadline for filing applications for physical damage in Cowlitz County in the State of Washington to close of business May 19, 1986. All other information remains the same; i.e., the termination date for filing applications for economic injury is the close of business on September 2, 1986.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: March 26, 1986.

James C. Sanders,

Administrator.

[FR Doc. 86-7313 Filed 4-1-86; 8:45 am]

BILLING CODE 8025-01-M

Interest Rates; Quarterly Determinations

The interest rate on section 7(a) Small Business Administration direct loans (as amended by Pub. L. 97-35) and the SBA share of immediate participation loans is ten (10) percent for the fiscal quarter beginning April 1, 1986.

On a quarterly basis, the Small Business Administration also publishes an interest rate called the optional "peg" rate (13 CFR 122.8-4(d)). This rate is a weighted average cost of money to the government for maturities similar to the average SBA loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. For the April-June quarter of 1986, this rate will be nine and one eight.

Edwin T. Holloway,

Associate Administrator for Finance and Investment.

[FR Doc. 86-7314 Filed 4-1-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Clatsop County, OR

AGENCY: Federal Highway Administration [FHWA], DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Clatsop County.

FOR FURTHER INFORMATION CONTACT: Richard R. Arnold, Environmental Coordinator and Safety Programs Engineer, Federal Highway Administration, Equitable Center, Suite 100, 530 Center NE., Salem, Oregon 97301, Telephone: [503] 399-5749.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Oregon Department of Transportation will prepare an environmental impact statement [EIS] on a proposal to widen the Pacific Way [Gearhart] to Dooley Bridge section of the Oregon Coast Highway. The project is 3.97 miles long, beginning at milepost 18.80 and ending at milepost 22.77. The purpose of the project is to widen the Oregon Coast Highway from Gearhart through Seaside, to provide for better safety and improved circulation and to upgrade this section of highway to current standards.

Three build alternatives and a no-build alternative will be considered. Two alternatives would widen the entire section to provide for a design speed of 35 mph or 45 mph. The typical section would consist of four travel lanes with a continuous left turn median, paved shoulders and sidewalks. The other build alternative would utilize a nearby abandoned railroad right-of-way to form a north-south couplet through part of the project length and would introduce a new transportation corridor into Seaside. Two bridges would be replaced with any of the build alternatives.

The project would require right-of-way from single family residences and businesses. Estuarine wetland areas would be affected by one bridge replacement and archeological resources found in the vicinity of the other bridge replacement may also be impacted. Noise increases may affect some residences in the project vicinity and long-term changes in land use along the new transportation corridor could be expected.

Information describing the proposed action will be sent to the appropriate Federal, State and local agencies, and to private organizations and citizens who express interest in this proposal. Public meetings will be held, as may be necessary, and a public hearing will also be held. No formal scoping meeting is planned at this time.

Comments or questions concerning this proposed action, and the EIS, should be directed to the FHWA at the address provided above.

[Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs" apply to this program.]

Issued on: March 24, 1986.

Richard R. Arnold,

Environment Coordinator/Safety Prgm Engineer, Oregon Division, Salem, Oregon.

[FR Doc. 86-7217 Filed 4-1-86; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket S-787]

Farrell Lines Inc.; Application To Provide Trade Route 10/13 Service with a Chartered Vessel

Farrell Lines Incorporated (Farrell), by application dated March 24, 1986, has requested an amendment to Appendix B of Operating-Differential Subsidy Agreement (ODSA), Contract MA/MSB-482, to provide Trade Route (TR) 10/13 (U.S. Atlantic/ Mediterranean) service with a C6-S-1x type vessel named PRESIDENT TRUMAN to be bareboat chartered from American President Lines, Ltd, for two years commencing May 10/11, 1986.

The service plan by Farrell would permit it to provide the service necessary to approximate its contractual requirements. Under ODSA MA/MSB-482, Farrell is authorized to make minimum/maxium of 44/66 sailings per year on TR 10/13.

Farrell's application points out that it has been unable to make the minimum required sailings because of a shortage of necessary ships. In Farrell's view, a fourth vessel on the mediterranean route, operated in conjunction with the three C5 containerships on the route is the minimum service to the full range of the trade route. Farrell between that it can enhance its competitiveness by expanding to the South Atlantic ports and developing eastern Mediterranean ports. To attempt to do so with three vessels would compromise its regular bi-weekly service by requiring lengthening of itineraries. The charter of the PRESIDENT TRUMAN will permit calls at South Atlantic ports of Charleston/or Savannah where cargo volumes have grown, especially outward to Egypt, a major market for Farrell.

Farrell claims that it will not only increase its carryings at the South Atlantic ports but also at the same time will neutralize in part the penetration of foreign-flag lines in the area. In addition, the inclusion of the extra vessel will reduce sailing frequency to 11 day intervals and in the process compare more favorably to the weekly service currently provided by the foreign lines. Farrell also states that it is essential that it be in position to obtain its share of the growing U.S. exports particularly in view of the competition from consortia of foreign carriers who have broadened their geographic service and increased sailing frequency.

Farrell expects that the PRESIDENT TRUMAN will provide eight sailings annually and raise the level of annual service to approximately 41 on the route. Farrell is seeking a level of ODS comparable to those of its other vessels included in its ODSA and operating on TR 10/13.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5:00 P.MN. on 4/11/86. This notice is publsihed as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Subsidy Board will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies)

By Order of the Maritime Subsidy Board.

Dated: March 28, 1986.

Georgia P. Stamas,

Secretary.

[FR Doc. 86-7267 Filed 4-1-86; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

[Docket No. IP85-11; Notice 2]

California Strolee, Inc.; Denial of Petition for Determination of Inconsequential Noncompliance

This notice denies the petition by California Strolee, Inc. of Rancho Dominguez, California, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et al.*) for an apparent noncompliance with 49 CFR 571.213, Motor Vehicle Safety Standard No. 213, *Child Restraint Systems.* The basis of this petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of the petition was published on July 22, 1985, and an opportunity afforded for comment (50 FR 29791).

Paragraph S5.1.3.1 of Federal Motor Vehicle Safety Standard No. 213 requires that on front facing child restraint systems the test dummy's torso shall be retained within the system and no portion of the test dummy's head

shall pass through the vertical transverse plane that is 32 inches forward of a point Z on the standard seat assembly, *et seq.*

In periodic testing of its production, the petitioner found that one of its booster seat component suppliers had changed the type of plastic used in molding the bolster, which helps retain the occupant and spreads the chest loads over a wider area. Strolee stated that approximately 4,367 units of its Number 605 booster seat shields were produced with the wrong polymer formulation by its supplier, causing cracking and excessive head excursion. In testing conducted by the petitioner, the head excursion was beyond the 32 inch maximum allowed by the standard. Test results, Table I, show a maximum excursion of 1.5" above the limit imposed by the standard.

TABLE 1.—TEST SPECIFICATIONS AND RESULTS

Date	Head excursion (32 inch maximum)	Knee excursion (36 inch maximum)	Head injury criterion (1,000 maximum)	Chest peak G's (60 G's maximum)
Apr. 23, 1985	33.5	29.2	455	36
May 2, 1985	32.9	27.7	306	29
May 2, 1985	31.8	26.5	384	28
May 2, 1985	31.7	27.8	306	30
May 2, 1985	32.7	27.1	585	29
May 9, 1985	30.5	26.9	312	15
May 9, 1985	31.2	28.1	434	13

Paragraphs S5.1.1 of the standard requires that, "each child seat restraint system shall: (a) Exhibit no complete separation of any load bearing structural element and no partial separation exposing either surfaces with a radius of less than ¼ inch or surfaces with protrusions greater than ⅜ inch above the immediate adjacent surrounding contactable surface of any structural element of the system;"

Strolee stated that, "In all of these tests, the child model remained within the unit and the cracks referred to did not produce separation of the product. In sum, for this product run with the different plastic, at some speeds a slightly excessive head excursion was observed, but the unit protected the child well within required ranges on other standards and held the child within the unit itself."

The petitioner indicated that cracking did not occur at speeds below 28 miles per hour, and that 28 mph appears to be the threshold for excessive head excursion.

"For the reasons set forth herein, having quickly stopped production and shipping of the units manufactured with the questionable plastic, and given the fact that even the questionable plastic, when subjected to the range of tests described above, generally performed in a fashion protective of the child, and within standards, Strolee petitions for a determination that the condition noted herein, while something producing a noncompliance with the head excursion portions of Motor Vehicle Standard No. 213, is inconsequential."

No comments were received on the petition.

Standard No. 213 establishes the minimum standards deemed acceptable for the performance of child restraint systems. The specifications for 30 mph impact testing and the 32-inch head excursion limit are the fundamental and limiting requirements, and represent the basic parameters of survival in a crash environment. Any relaxation in either of these two specifications would reduce child safety below an acceptable level. Accident data indicates that in frontal collisions over 60% of fatalities occur in accidents above 30 mph (Report UM-HSRI-80-36). The allowed limit of 32 inches represents the available head excursion space found in medium size automoblies. In compact and subcompact automobiles the existing space is 3 to 4 inches less. Further, NHTSA's review of the petitioner's data shows that its testing was conducted at a lower serverity level than that of the standard.

For the foregoing reasons, petitioner has failed to sustain its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is denied.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: March 27, 1986.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 86-7240 Filed 4-1-86; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirement Submitted to OMB for Review

Dated: March 26, 1986.

The Department of the Treasury has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0220
Form Number: IRS Forms 6008 & 6009
Type of Review: Extension
Title: Fee Deposit for Outer Continental Shelf Oil; Quarterly Report of Fees Due on Oil Production
OMB Number: 1545-0235
Form Number: IRS Form 730
Type of Review: Extension
Title: Tax on Wagering
OMB Number: 1545-0662
Form Number: IRS Form W-3 S&I.
Type of Review: Extension
Title: Transmittal of Income and Tax Statements for State and Local Governmental Employers
Clearance Officer: Garrick Shear (202) 566-6150, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Robert Neal (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

U.S. Customs Service

OMB Number: 1515-0126
Form Number: None
Type of Review: Reinstatement
Title: Current List of Officers, Members or Employees, of Licensed Cartmen or Lightermen
Clearance Officer: Vince Olive (202) 566-9181, U.S. Customs Service, Room 6321, 1301 Constitution Avenue, NW., Washington, DC 20229
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Joseph F. Maty,

Departmental Reports Management Office.

[FR Doc. 86-7301 Filed 4-1-86; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Supplement to Dept. Circ.—Public Debt Series—No. 13-86]

Treasury Notes, Series N-1990

Washington, March 26, 1986.

The Secretary announced on March 25, 1986, that the interest rate on the

notes designated Series N–1990, described in Department Circular—Public Debt Series—No. 13–86 dated March 19, 1986, will be 7¼ percent. Interest on the notes will be payable at the rate of 7¼ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 86–7262 Filed 4–1–86; 8:45 am]

BILLING CODE 4810–40–M

[Supplement to Dept. Cir.—Public Debt Series—No. 14–86]

Treasury Notes, Series F–1993

Washington, March 27, 1986.

The Secretary announced on March 26, 1986, that the interest rate on the notes designated Series F–1993, described in Department Circular—Public Debt Series—No. 14–86 dated March 19, 1986, will be 7⅜ percent. Interest on the notes will be payable at the rate of 7⅜ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 86–7263 Filed 4–1–86; 8:45 am]

BILLING CODE 4810–40–M

UNITED STATES INFORMATION AGENCY

United States Advisory Commission on Public Diplomacy

Chairman Edwin J. Feulner, Jr. and members of the U.S. Advisory Commission on Public Diplomacy will hold a press backgrounder on the findings and recommendations in its 1986 annual report on the U.S. Information Agency at 10:00 a.m. on Wednesday, April 16, 1986 in Room 840, 301 4th Street, SW., Washington, DC.

Please call Gloria Kalamets, (202) 485–2468, if you are interested in attending since entrance to the building is controlled.

Dated: March 27, 1986.

Charles N. Canestro,

Management Analyst, Federal Register Liaison.

[FR Doc. 86–7250 Filed 4–1–86; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 63
Wednesday, April 2, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:55 p.m. on Thursday, March 27, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in First State Bank, White Cloud, Kansas, which was closed by the State Bank Commissioner for the State of Kansas on Thursday, March 27, 1986; (2) accept the bid for the transaction submitted by The Silver Lake State Bank, Silver Lake, Kansas, an insured State nonmember bank; (3) approve the application of The Silver Lake State Bank, Silver Lake, Kansas, for consent to purchase certain assets of and assume the liability to pay deposits made in First State Bank, White Cloud, Kansas, and for consent to establish the sole office of First State Bank as a branch of The Silver Lake State Bank; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

(B)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in First State Bank, Memphis, Texas, which was closed by the Banking Commissioner for the State of Texas on Thursday, March 27, 1986; (2) accept the bid for the transaction submitted by Memphis State Bank, Memphis, Texas, a newly-chartered State nonmember bank; (3) approve the applications of Memphis State Bank, Memphis, Texas, for Federal deposit insurance and for consent to purchase certain assets of and assume the liability to pay deposits made in First State Bank, Memphis, Texas; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

(C)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Stockholm State Bank, Stockholm, South Dakota, which was closed by the Director of Banking and Finance for the State of South Dakota on Thursday, March 27, 1986; (2) accept the bid for the transaction submitted by Community State Bank of Stockholm, Stockholm, South Dakota, a newly-chartered State nonmember bank; (3) approve the applications of Community State Bank of Stockholm, Stockholm, South Dakota, for Federal deposit insurance and for consent to purchase certain assets of and assume the liability to pay deposits made in Stockholm State Bank, Stockholm, South Dakota; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

(D) consider a recommendation regarding an administrative enforcement proceeding against an insured bank (name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8) and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8) and (c)(9)(A)(ii)).

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Michael Patriarca, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: March 28, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-7397 Filed 3-31-86; 12:58 pm]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, April 7, 1986, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for Federal deposit insurance:

Meetinghouse Co-operative Bank, an operating noninsured co-operative bank located at 2250 Dorchester Avenue, Boston (Dorchester), Massachusetts.

Cityside Loan & Thrift Company, an operating noninsured industrial bank located at 7525 Mitchell Road, Eden Prairie, Minnesota.

Minnesota Loan & Thrift Company of Rochester, an operating noninsured industrial bank located at Hillcrest Shopping Center, Rochester, Minnesota.

Application for consent to purchase assets and assume liabilities:

Mellon Bank (North) National Association, Oil City, Pennsylvania, for consent to purchase certain assets of and assume the liability to pay certain deposits made in the North East Branch of Colony First Federal Savings and Loan Association, Monaca, Pennsylvania, a non-FDIC-insured institution.

Application for consent to merge:

Peoples Bank of Mississippi, National Association, Union, Mississippi, for consent to merge, under the charter of Depositors Savings Bank and with the title of "Eastover Bank for Savings," with Depositors Savings Bank, Jackson, Mississippi, a non-FDIC-insured institution.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,461-M (Amendment)
Modifications of Delegations of Authority, Kansas City Regional Office
Case No. 46,463-SR
The Peoples Bank of the Virgin Islands, Charlotte Amalie, Virgin Islands

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Summary Audit Report re:
The First National Bank of Jacksonville, Jacksonville, Alabama, AP-477 (Memo dated March 6, 1986)
Summary Audit Report re:
Bank of Lockesburg, Lockesburg, Arkansas, AP-467 (Memo dated February 25, 1986)
Summary Audit Report re:
Urbana Savings Bank, Urbana, Iowa, AP-473 (Memo dated March 13, 1986)
Summary Audit Report re:
The First State Bank, Edna, Kansas, AP-471 (Memo dated March 10, 1986)
Summary Audit Report re:
Swift County Bank, Benson, Minnesota, AP-472 (Memo dated March 11, 1986)
Summary Audit Report re:
First Trust Bank of Lakefield, Lakefield, MInnesota, SR-568 (Memo dated February 25, 1986)
Summary Audit Report re:
Security State Bank, Edgar, Nebraska, AP-469 (Memo dated February 20, 1986)
Summary Audit Report re:
Fairfield State Bank, Fairfield, Nebraska, SR-571 (Memo dated February 24, 1986)
Summary Audit Report re:
Scroggin and Company Bank, Oak, Nebraska, SR-570 (Memo dated February 20, 1986)
Summary Audit Report re:
Bank of Taylor, Taylor, Nebraska, AP-466 (Memo dated February 21, 1986)
Summary Audit Report re:
Bank of Newcastle, Newcastle, Oklahoma, AP-463 (Memo dated February 10, 1986)
Summary Audit Report re:
Bank of Oregon, Woodburn, Oregon, CP-468 (Memo dated February 21, 1986)
Summary Audit Report re:
The Energy Bank, N.A., Dallas, Texas, AP-464 (Memo dated February 10, 1986)
Summary Audit Report re:
Northwest Bank, White Settlement, Texas, AP-465 (Memo dated February 18, 1986)
Summary Audit Report re:
Strong's Bank, Dodgeville, Wisconsin, SR-576 (Memo dated March 11, 1986)
Summary Audit Report re:
American National Bank of Riverton, Riverton, Wyoming, AP-470 (Memo dated March 7, 1986)
Summary Audit Report re:
Audit of Delegations of Authority, Midland Consolidated Office (Memo dated February 20, 1986)
Summary Audit Report re:
Minneapolis Consolidated Office-Liquidation, Cost Center 3200 (Memo dated February 7, 1986)
Summary Audit Report re:
Costa Mesa Consolidated Office, Cost Center—3610 (Memo dated February 28, 1986)
Summary Audit Report re:
LAMIS System Development Project, Audit Report (Memo dated February 28, 1986)

Discussion Agenda:

Memorandum and resolution re: Statement of Policy on Special Purpose Finance Subsidiaries which addresses the safety and soundness considerations associated with finance subsidiaries established by insured State nonmember banks and insured savings banks.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, NW., Wasington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: March 31, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-7424 Filed 3-31-86 3:18 p.m.]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, April 7, 1986, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation, in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,462-NR
Penn Square Bank, National Association, Oklahoma City, Oklahoma
Case No. 46,464-NR
Penn Square Bank, National Association, Oklahoma City, Oklahoma
Case No. 46,465-NR
Penn Square Bank, National Association, Oklahoma City, Oklahoma

Recommendation regarding the Corporation's assistance agreement with an insured bank pursuant to section 13 of the Federal Deposit Insurance Act.

Memorandum regarding the Corporation's corporate and liquidation activities.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: March 31, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-7425 Filed 3-31-86; 3:19 p.m]

BILLING CODE 6714-01-M

4

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, April 7, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 27, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–7302 Filed 3–28–86; 4:54 pm]

BILLING CODE 6210–01–M

5

INTERNATIONAL TRADE COMMISSION

[USITC SE–86–11]

TIME AND DATE: Thursday, April 3, 1986 at 2:00 p.m.

PLACE: Room 331, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and Complaints.
   a. Certain insulated security chests (Docket No. 1291).
   b. Certain low-nitrosamine trifluralin herbicides (Docket No. 1303).
5. Investigation No. 731–TA–308/310 [Preliminary] (Butt-weld pipe fittings from Brazil, Japan and Taiwan)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

Kenneth R. Mason,

Secretary.

March 27, 1986.

[FR Doc. 86–7310 Filed 3–28–86; 5:10 pm]

BILLING CODE 7020–02–M

6

LEGAL SERVICES CORPORATION

Provisions for the Delivery of Legal Services—Committee Meeting

TIME AND DATE: The meeting will commence at 1:00 p.m., Wednesday, April 9, 1986, and continue until all official businesses is completed.

PLACE: Holiday Inn Crowne Plaza, Mississippi Ball Room, Convention Center, 333 Poydras, New Orleans, Louisiana 70130.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
   —February 20, 1986
3. Status report on the Training Task Force
4. Alternative Dispute Resolution (ADR) Discussion
5. Client Advisory Committee Resolution

CONTACT PERSON FOR MORE INFORMATION: Daniel M. Rathbun, Provisions Coordinator, Division of Policy Development, (202) 863–1842.

Date issued: March 31, 1986.

Timothy H. Baker,

Secretary.

[FR Doc. 86–7431 Filed 3–31–86; 3:43 pm]

BILLING CODE 6820–35–M

7

LEGAL SERVICES CORPORATION

Operations and Regulations Committee Meeting

TIME AND DATE: The meeting will commence at 9:30 a.m., Thursday, April 10, 1986, and continue until all official business is completed.

PLACE: Holiday Inn Crowne Plaza, Mississippi Ball Room, Convention Center, 333 Poydras, New Orleans, Louisiana 70130.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
   —February 20, 1986
3. Questioned Costs—Proposed 45 CFR 1630
   —Report from Corporation Staff
   —Public comment
   —Recommendations to Board
4. F.I.F.O.—Proposed 45 CFR 1631
   —Report from Corporation Staff
   —Public comment
   —Recommendations to Board
5. Other Regulations Adopted after April 27, 1984.

CONTACT PERSON FOR MORE INFORMATION: Thomas A. Bovard, Counsel, Division of Policy Development, (202) 863–1842.

Date issued: March 31, 1986.

Timothy H. Baker,

Secretary.

[FR Doc. 86–7432 Filed 3–31–86; 8:45 am]

BILLING CODE 6820–35–M

8

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 31, April 7, 14, and 21, 1986.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of March 31

Tuesday, April 1

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Wednesday, April 2

2:00 p.m.
Status of Pending Investigations (Closed—Ex. 5 & 7)

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of April 7—Tentative

Thursday, April 10

10:00 a.m.
Periodic Briefing on NTOLs (Open/Portion may be Closed—Ex. 5 & 7)

11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, April 11

10:00 a.m.
Periodic Briefing by Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)

Week of April 14—Tentative

Tuesday, April 15

2:00 p.m.
Meeting with NARUC on Implementation of Nuclear Waste Policy Act (Public Meeting)

Wednesday, April 16

11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Thursday, April 17

3:00 p.m.
Discussion/Possible Vote on Palo Verde—2 Full Power Operating License (Public Meeting)

Week of April 21—Tentative

Wednesday, April 23

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado, (202) 634–1410.

Julia Corrado,

Office of the Secretary.

March 27, 1986.

[FR Doc. 86–7286 Filed 4–2–86; 4:25 pm]

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federal register

Wednesday
April 2, 1986

Part II

Environmental Protection Agency

40 CFR Parts 141, 142 and 143

National Primary and Secondary Drinking Water Regulations; Fluoride; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141, 142, and 143

[WH-FRL-2978-2]

National Primary and Secondary Drinking Water Regulations; Fluoride

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice finalizes several actions regulating fluoride in public drinking water systems under the Safe Drinking Water Act (SDWA) (42 U.S.C. 300f *et seq.*).

EPA is promulgating a National Revised Primary Drinking Water Regulation (NRPDWR or Revised Regulation) setting an MCL of 4.0 mg/1 for fluoride. EPA is also promulgating an amendment to the existing National Interim Primary Drinking Water Regulation (NIPDWR or Interim Regulation) for fluoride which revises the Interim Maximum Contaminant Level (MCL) to 4.0 mg/1. This amendment to the Interim Regulation and the new Revised Regulation are based on a Recommended Maximum Contaminant Level (RMCL) of 4 mg/1 promulgated in the **Federal Register** of November 14, 1985 (50 FR 47142) to protect against crippling skeletal fluorosis. While the RMCL is a non-enforceable health goal, Interim and Revised Regulations are enforceable standards for the protection of public health.

The Agency is also promulgating procedures by which systems may obtain variances from the Interim and Revised Regulations.

Under the variance procedure, a system must install or agree to install, one of the identified best technologies generally available (BTGA) unless none of them are technically available and effective. In any event, the system must install other technologies if their use is technically feasible, economically reasonable, and will achieve reductions commensurate with the costs incurred. EPA has also concluded that exemptions are available under the Act for the Revised Regulation.

A National Secondary Drinking Water Regulation (NSDWR or secondary regulation) is promulgated establishing a Secondary Maximum Contaminant Level (SMCL) of 2.0 mg/1 to protect against objectionable dental fluorosis. EPA is also establishing monitoring, reporting, and public notification regulations to support the Interim and Revised Regulations. Secondary regulations are federal guidelines for the protection of public welfare. EPA also is establishing a public notification requirement for systems which exceed the SMCL.

EFFECTIVE DATE:

1. The revised MCL (§ 141.61(b)(1)) and the requirement that compliance monitoring data be produced by laboratories that have met certain requirements (§ 141.23(g)(4)) will take effect October 2, 1987.

2. All other regulations promulgated today will take effect May 2, 1986.

ADDRESSES: Supporting documents cited in Section XI will be available for inspection in Room 2904 (rear) in the Public Information Reference Unit, USEPA, 401 M Street SW., Washington DC 20460 and at the Drinking Water Supply Branch Offices in EPA's Regional Offices. For the addresses of the EPA Regional Offices, see the *Supplementary Information* section, Appendix A.

Copies of the documents on the technology and cost, methods and monitoring, and economic impact analysis are available for a fee from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. The toll free number is 800/336-4700; local: 703/487-4650.

The public comments, supporting documents and a copy of the index to the public docket for this rulemaking are available for review during normal business hours at the EPA, Room 2904 (rear), 401 M Street SW., Washington, DC 20460. A complete copy of the public docket is available for inspection by contacting Ms. Kittibel Miller, 202/382-7380.

FOR FURTHER INFORMATION: Contact: Joseph A. Cotruvo, Ph.D., Director, Criteria and Standards Division, Office of Drinking Water (WH-550), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-7575.

SUPPLEMENTARY INFORMATION:

Abbreviations Used in This Notice

BTGA: Best Technology Generally Available
MCL: Maximum Contaminant Level
NIPDWR: National Interim Primary Drinking Water Regulations
NPDWR: National Primary Drinking Water Regulation (includes both Interim and Revised National Primary Drinking Water Regulations)
NSDWR: National Secondary Drinking Water Regulation
POE: Point-of Entry Technologies
POU: Point-of-Use Technologies
PQL: Practical Quantitation Level
RMCL: Recommended Maximum Contaminant Level
RO: Reverse Osmosis
SDWA: The Safe Drinking Water Act, also referred to as the Act
SMCL: Secondary Maximum Contaminant Level
POTW: Publicly Owned Treatment Work
NPDES: National Pollutant Discharge Elimination System

I. Statutory Authority and Regulatory Background

A. Statutory Authority

Sections 1401 and 1412 of the Safe Drinking Water Act ("SDWA" or "the Act") require EPA to establish National Primary Drinking Water Regulations (NPDWR) for contaminants which may have any adverse human health effect. The NPDWR establish a Maximum Contaminant Level (MCL) for drinking water supplied by public water systems. If it is not economically or technically feasible to ascertain the level of a contaminant in drinking water, a treatment technique is to be established in lieu of an MCL.

Today's action promulgates a Revised Regulation for fluoride and will supersede the Interim Regulation 18 months from today's date. Revised Regulations are developed in two steps. First EPA establishes a Recommended Maximum Contaminant Level (RMCL) based upon health effects, then an MCL is established as close to the RMCL as feasible with the use of the best technology, treatment techniques and other means which are generally available (taking costs into consideration). Section 1412(b)(3).

Under section 1412, Interim Regulations were to be promulgated in 1975. Section 1412(a)(1) states that the Interim Regulations may be amended

from time to time. Today's action also amends the Interim Regulation, effective 30 days from today's date.

Sections 1415 and 1416 authorize EPA or primary States to issue variances and exemptions. Variances are allowed if it is determined that a system cannot comply despite use of the best technology generally available (BTGA). Exemptions are allowed for systems which cannot comply with an MCL for compelling reasons (including economic reasons).

National Secondary Drinking Water Regulations (NSDWR) (Section 1412(c)) are also authorized by the SDWA. The NSDWR establish Secondary Maximum Contaminant Levels which are guidelines for the protection of the public welfare; they are not federally enforceable.

States may assume primary enforcement responsibility (primacy) for public water systems under the SDWA, section 1413. To assume or retain primacy, States must adopt MCLs that are no less stringent than EPA's but need not adopt the SMCLs or RMCLs.

Under section 1401(1)(D), NPDWRs are to contain "criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; including quality control and testing procedures to insure compliance with such levels." In addition, section 1445 states, "every person who is a supplier of water . . . shall establish and maintain such records, make such reports, conduct such monitoring and provide such information as the Administrator may reasonably require by regulation to assist him in establishing regulations, . . . in evaluating the health risks of unregulated contaminants or in advising the public of such risks." Section 1450 authorizes the EPA to promulgate such rules as are necessary to implement the Safe Drinking Water Act.

Public notification requirements (Section 1414(c)) provide that any violation of a maximum contaminant level, failure to comply with an applicable testing provision, or failure to comply with any monitoring required pursuant to Section 1445 of the Act must be reported to the persons served by the water system.

B. Regulatory Background

Detailed discussions of the background on the regulation of fluoride in drinking water together with information on occurrence and adverse effects of human exposure are presented in the proposed RMCL (50 FR 20164, May 14, 1985), and in the final RMCL and proposed MCL (50 FR 47142 & 47156, November 14, 1985). This background is summarized below.

The Interim Regulation for fluoride was promulgated in 1975 as a NIPDWR under section 1412 of the Safe Drinking Water Act (40 FR 59566, December 24, 1975). The MCL varied from 1.4 mg/l to 2.4 mg/l, depending upon local annual average temperatures in the location of the public water system. The MCL was based upon the protection from objectionable dental fluorosis.

In 1981, the State of South Carolina petitioned the Agency requesting that fluoride be deleted from the Primary Drinking Water Regulations and that an SMCL be established in the Secondary Drinking Water Regulations. South Carolina sued EPA seeking faster action in EPA's rulemaking on fluoride (*South Carolina Department of Health and Environmental Control* v. *U.S. Environmental Protection Agency, et al.*, No. 3:84–0676–15 (D.S.C. filed April 4, 1984)). On January 18, 1985, EPA and South Carolina signed a consent decree. The decree set forth a schedule for rulemaking decisions for fluoride under the revised regulation but did not commit the Agency to regulate fluoride or to regulate at any particular level. The first step in implementing that decree was accomplished by proposing the RMCL, published on May 14, 1985 (50 FR 20164). The second step was met with the promulgation of the fluoride RMCL and proposal of an MCL, an SMCL, and the related monitoring, reporting, and notification actions, published on November 14, 1985. Today's rule is the third and final step in the satisfaction of the consent decree.

In the November 14, 1985 notice, the proposed MCL was based upon the Agency finding that the best technology generally available (BTGA) for the removal of fluoride from public water supplies is capable of achieving the RMCL (i.e., 4 mg/l). The proposed SMCL was based upon the finding that 2 mg/l would prevent the majority of cases of water-related cosmetically objectionable dental fluorosis while still allowing for the beneficial effects of fluoride (prevention of dental caries). In addition, the Agency proposed that the Interim MCL for fluoride be amended to the same level as the proposed Revised MCL, 4.0 mg/l.

C. Public Comments on the Proposal

EPA requested comments on all aspects of the proposal. The Agency's responses to many of the issues raised in the comments are presented in the following section. A detailed recitation of the comments received and the Agency's responses are presented in the document "Responses to Comments Received on the Proposed Fluoride MCL and SMCL of November 14, 1985" (EPA 1986d), available in the public docket.

EPA received over 90 written comments on the proposed rule. Of the comments, 59 were from individuals, 4 were from companies, 12 from public or professional organizations, and 16 from Federal Agencies, States, and local governments.

A public hearing was held in Washington, DC on December 18, 1985, and an additional 6 comments were provided at that time.

Many of the comments received addressed the RMCL and the Agency's findings on adverse health effects and did not address any of the proposed actions. Because these comments in fact pertain to the RMCL, they are not relevant to this rulemaking. However, the Agency examined all comments received for new information on the health effects of fluoride. This review did not identify any significant new health-related information.

II. Summary and Explanation of Today's Actions

This notice explains the following actions taken today by the Agency:

- The Revised MCL is set at 4.0 mg/l.
- The Interim MCL is set at 4.0 mg/l.
- BTGA under Section 1412 is identified.
- Variances and exemptions are allowed as specified.
- BTGA and other appropriate technologies under Section 1415 are specified, including certain procedures for issuance of a variance.
- The SMCL is set at 2.0 mg/l.
- Public notice is required of levels above 2.0 mg/l SMCL. A required notice is prescribed.
- Compliance monitoring requirements are set.
- Analytical methods for use in compliance monitoring are revised.
- A laboratory performance requirement of ±10% of the reference value is established.
- Non-community Water Systems are not covered by today's rules.
- Decentralized treatment technologies (point-of-entry, point-of-use, and bottled water) are not addressed in the final rules.

A. Establishment of the MCL

MCLs are enforceable standards under the SDWA. They are to be set as close to the RMCL as is feasible with the use of best technology generally available (taking cost into consideration). An MCL is to be established in lieu of a treatment technique if it is economically and

technologically feasible to ascertain the concentration of the contaminant in public water systems. Other factors relative to technical feasibility, such as levels of reliable analytical detection, also are considered.

1. *Analytical Methods.* The Agency has examined the analytical methods available for the measurement of fluoride in drinking water and summarized the evaluation in the document entitled, "Monitoring For Fluoride In Drinking Water, an Update," (EPA 1986a). Based upon this examination, the Agency has determined that analytical methodologies currently exist which can reliably measure fluoride in drinking water to levels well below the MCL. In addition, measurements at a frequency to assure detection of any violation are considered to be economically feasible for any public water system. Costs are estimated to be approximately $10 per sample analysis.

In 1975, EPA approved five analytical methodologies for the detection of fluoride under the interim standard: (1) Ion selective electrode, (2) automated ion selective electrode, (3) colorimetric SPADNS, (4) complexone, and (5) zirconium eriochrome cyanine R. The last of these methods is being deleted today due to problems with obtaining standards and the absence of data from performance evaluation studies. The remaining 4 methods are specified in this rule as approved for use in compliance monitoring. The Agency has determined that the 4 methods have method detection limits at or below 0.1 mg/l and that the practical quantitation level (PQL) for fluoride is 0.5 mg/l. The PQL is the lowest level that can be reliably achieved, within specified limits of precision and accuracy, during routine laboratory operating conditions. The determinations of the method detection limits and the PQL are based on performance evaluation studies of the 4 approved analytical methods. Further information on the PQL and precision and accuracy limits is contained in the Monitoring Document (EPA 1986a).

Existing rules require that analyses for compliance monitoring purposes be conducted only by certified laboratories. In addition, effective 18 months from today, monitoring data may only be used to determine compliance if they are produced by a laboratory that has successfully analyzed performance evaluation samples containing fluoride at concentrations from 1.0 mg/l to 10.0 mg/l to within ±10% of the true value. EPA has added to the regulations a definition of a performance evaluation sample; this definition is consistent with the way the term was used in the proposal and also with the common understanding. This action is part of EPA's ongoing efforts to improve the laboratory certification program. A more complete explanation of the program is contained in the notice proposing similar laboratory performance criteria for volatile organic chemicals (50 FR 46880, Section III. B.3., November 13, 1985).

EPA proposed that the changes to the monitoring requirements and the laboratory performance requirement be effective within 30 days of promulgation. Although the monitoring requirements are promulgated effective 30 days from today, EPA has decided to make the laboratory performance requirements effective 18 months hence to avoid implementation problems. Not all laboratories conducting drinking water analyses for fluoride have been analyzing performance evaluation samples. To impose a 30 day effective date would not allow sufficient time for laboratories interested in analyzing for fluoride to learn of the requirement, obtain performance evaluation samples, report to EPA, and determine whether they have passed or failed the performance requirement. Because performance samples are only distributed by the Agency semiannually, the Agency must postpone the effective date of the laboratory performance requirement. In addition, the EPA Environmental Monitoring and Support Laboratory in Cincinnati (EMSL) has been distributing approximately 1,100 fluoride performance samples to commercial *and* state laboratories, and anticipates that between 3,000 and 5,000 laboratories may want to analyze for fluoride and need to meet the performance requirement (there are approximately 5,000 laboratories that are now conducting drinking water analyses). It is, therefore, necessary to allow this significant number of "new" laboratories sufficient time to obtain performance evaluation samples in an orderly fashion. Eighteen months should allow for an orderly implementation of the new requirement.

EPA believes that laboratories should be required to analyze performance samples at least annually. Less frequent performance checks would provide insufficient oversight of laboratory performance.

The performance requirement is promulgated as part of the National Primary Drinking Water Regulations which include criteria and procedures to assure a supply of drinking water which dependably complies with the MCL, and specifies quality control and testing procedures (SDWA sec. 1401(1)(D)). Because states must adopt NPDWRs that are no less stringent than EPA's regulations, state regulations must be no less stringent than the monitoring and performance requirement regulations promulgated today. Laboratories that wish to comply with the performance requirement should contact the state drinking water office that handles laboratory certification or the EPA Regional Office where the state does not have primary enforcement responsibility.

EPA requested comment on the analytical methods and performance requirement in the proposal. No comments were received on the analytical methodologies. Comments received on the laboratory performance requirements supported the proposal.

2. *Best Technology Generally Available.* The Agency determined BTGA for fluoride by first identifying available technologies which have the ability to reduce fluoride concentrations in drinking water, and second, evaluating the costs and commercial availability of technologies. The criteria used in the determination of whether such technologies are economically available is whether they are reasonably affordable by regional and large metropolitan public water systems (H.R. Rep. No. 93–1185, p. 18 (1974)). BTGAs were also judged to be the *best* technology based upon the following factors: wide applicability, high removal efficiency, high cost efficiency, high degree of compatibility with other water treatment processes, and the ability to achieve compliance for all the water in a public water system.

A number of treatment processes were examined for their potential to reduce fluoride. These technologies are discussed in the document "Technologies and Costs For The Removal of Fluoride From Potable Water Supplies, With Addendum," (U.S. EPA 1986b). A draft of this document was available at the time of the proposal. This document is available from the National Technical Information Service at the address listed at the front of this notice. This document includes the evaluation of the following central treatment technologies: activated alumina adsorption, reverse osmosis (RO), modified lime softening, adsorption using bone char and tricalcium phosphate, anion exchange resins, and electrodialysis. Nontreatment options for the reduction or removal of fluoride, regionalization and alternate sources, were also evaluated. Additionally, point-of-use (POU), point-of-entry (POE) and bottled

water were examined. These were discussed as possible decentralized compliance methods.

The Agency proposed that of the technologies considered, activated alumina adsorption and RO meet the above criteria for BTGA under Section 1412, which is the basis for setting the MCL. Activated alumina was considered to be generally available technology in 1975 in promulgating the interim MCL regulation.

The costs of reducing fluoride concentrations have been estimated for both activated alumina and RO (EPA 1986b). EPA estimates that the average system which will be out of compliance with the MCL will have a fluoride concentration of 5.4 mg/1. In the MCL proposal, the costs for such systems to reduce their levels of fluoride (not including the cost of waste disposal) to 4 mg/1 by activated alumina were estimated to range from $0.51/1,000 gallons for systems serving from 25 to 100 customers to $0.22/1,000 gallons for systems serving 10,000 to 100,000 customers. The cost of reducing fluoride using RO ranged from $1.50/1,000 gallons in systems serving 25 to 100 customers to $0.74/1,000 gallons in systems serving 10,000 to 100,000 customers. The RO process may be especially desirable in situations where high dissolved solids and other contaminants may have to be removed in addition to fluoride because RO removes a high percentage of almost all inorganic ions, including fluorides, and some organic matter, turbidity, bacteria, and viruses. Although the cost of RO is somewhat greater than activated alumina, its additional benefits may make it the technology of choice for some systems.

The costs of meeting the MCL for systems with higher levels of fluoride, 8 to 12 mg/1, have not been exhaustively calculated because (1) the MCL is to be based on performance of BTGA with relatively clean intake waters and because (2) only 18 systems are reported to have levels greater than 8 mg/1. The Agency estimates that costs for systems with these higher concentrations could be as much as 2 times the above costs. This estimate is based on the fact that systems at 5.4 mg/1 are expected to treat only a portion of their flow and then blend it with the untreated portion to meet the MCL. Systems with higher levels of fluoride would use the same treatment methodology but treat a greater portion of their flow. The difference in cost would result from more frequent recharging of the activated alumina or the need for a somewhat higher capacity RO unit.

The Agency received a number of comments on its proposal of which technologies could be considered BTGA. Several comments agreed with the EPA analysis that activated alumina and RO were effective for removing fluoride. No comments were received stating that these technologies were not effective. Critical comments were received on two issues relating to BTGA: the affordability of BTGA technologies for small systems, and the acceptance of point-of-entry and point-of-use devices and bottled water as BTGA.

Two States and an engineering firm questioned whether activated alumina or RO was actually affordable by small systems. They contended that the methodologies were too expensive to be considered generally available. As explained below, EPA continues to believe that RO and activated alumina are BTGA and can be reasonably afforded by large metropolitan and regional water systems as well as by small systems.

Commenters also stated that the Agency had not considered waste disposal in connection with the best technologies generally available. They argued that the costs of disposing of waste streams generated in the removal of fluoride would be expensive and cost more than the removal technology itself. One commenter hypothesized that disposal could cost millions of dollars. The comments did not provide any specific technical or economic information supporting these cost estimates.

EPA agrees that BTGA should include consideration of disposal for wastes generated by the BTGA water treatment technology. The Agency believes that consideration of waste disposal in selecting BTGA is good regulatory policy and is allowed under the Safe Drinking Water Act. Specifically, EPA believes that the SDWA requirement that the Agency determine *best* technology generally available means that the Agency is authorized by the SDWA to consider the economic costs and environmental impacts that flow from the wastes generated by the BTGA.

In general, EPA identifies the water storage, treatment and disposal (STD) technologies reasonably available for large metropolitan and regional drinking water plants or at off-site facilities. The Agency then considers the environmental impacts of the available STD technologies to determine if they are significantly adverse. Finally, the Agency determines the economic costs of the STD technologies and includes those costs with the costs of water treatment technologies in determining whether the BTGA is generally available to large metropolitan and regional systems.

Waste disposal practices were described in the proposal (see 50 FR 47162, November 14, 1985) and in supporting documents. However, consistent with this policy and in response to these comments, waste disposal issues have been reexamined.

Activated alumina plants generate wastewaters when the alumina is periodically backwashed and regenerated with sodium hydroxide. These wastewaters can be 3% to 4% of the plant flow and consist of a concentrated fluoride solution (generally about 20 to 30 ppm) with an elevated pH. RO technologies do not involve regeneration. RO processes continually separate fluoride from drinking water and concentrate it in a smaller continuous flow of reject water. RO process-wastewater can be 15% to 20% of the plant flow. While the volume of RO reject water is greater than the volume of waste from activated alumina systems, the RO reject water is more dilute (approximately 10 ppm fluoride). Also, a continuous flow of reject water may be easier to handle in some circumstances than the sudden quantity of wastes generated during the regeneration of activated alumina.

Alternatives for disposal of fluoride wastewaters for activated alumina include disposal to a stream or other body of water, to a publicly owned treatment plant via sewer or to an evaporation pond, or by chemical treatment and recycling.

Where evaporation rates exceed rainfall, activated alumina wastes may be discharged into lined evaporation ponds. This method of disposal has been utilized by at least four public water systems: Desert Center, California; Vail, Arizona; Gila Bend, Arizona; and Palo Verde, Arizona.

In regions where disposal of wastes by evaporation is not possible and where the discharge of fluoride wastewater is permitted, wastes may be contained in a surge tank from which slow discharge to a publicly owned treatment work (POTW) or directly to receiving waters may be permissible. This is termed "controlled discharge."

Zero discharge for activated alumina systems can be accomplished by chemical precipitation of fluoride with

lime and subsequent dewatering of solids and adjustment of pH. The neutral wastewater supernatant is then fed back to the head of the treatment plant. This technology has been demonstrated on a pilot scale for activated alumina plants, but is not yet believed to be generally available.

Reverse osmosis reject water has been disposed by discharge into ponds, streams, underground tile systems and public sewers (Sorg, *et al.*, 1980 & Eisenberg, *et al*, 1984). Small RO systems, in mobile home and trailer parks, have reported a number of discharge practices including the discharge of reject water into a field, creek, bay, storm sewer or a holding pond (Sorg, 1980). Fluoride wastewaters from RO systems may also be discharged continuously to a publicly owned treatment plant.

Discharge of fluoride wastewaters to an evaporation pond is not likely to have an adverse environmental impact. The wastewater is not of such high pH that it could be considered a hazardous waste under the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et. seq.)*, and it is not a listed hazardous waste. There appear to be no other federal regulatory schemes that would prohibit STD in lagoons or evaporation ponds. There may be state restrictions, however.

Discharge to a POTW or a receiving water is permissible under federal law as long as the requirements of the Clean Water Act (33 U.S.C. 1251 *et. seq.* are met. (State law may impose further restrictions.) Discharge to a POTW would be allowed under 40 CFR 403.5 unless the fluoride discharges would pass through the POTW and cause it to violate a permit limitation. POTWs also have authority to limit pollutants sent to them by indirect discharges. Direct discharge to a receiving water would require a National Pollutant Discharge Elimination System (NPDES) permit issued by EPA under the Clean Water Act (or by a state approved to administer the NPDES program).

Table 1 presents a summary of the estimated additional costs for disposal for the reduction of fluoride by BTGA for several representative system sizes. The costs of disposal for both activated alumina and RO can be minimal where the wastes can be directly discharged into local sewers. However, costs for evaporation ponds and surge tanks may be significant for smaller systems. Disposal does not significantly increase the total costs for large systems.

TABLE 1.—TOTAL COSTS OF TREATMENT IN DOLLARS PER 1,000 GALLONS

	System size (people served)		
	Small (25–99)	Medium (2,500–5,000)	Large (10,000–100,000)
Act. Alum. Removal Alone	$0.51	$0.32	$0.22
Removal Plus Discharge to POTW	.53	.33	.23
Removal Plus Controlled Discharge to POTW[1]	.97	.38	.25
Removal Plus Evaporation Pond	1.44	.45	.28
RO Removal Alone	1.52	1.07	.74
Removal Plus Discharge to POTW[1]	1.84	1.25	.86

[1] Direct discharge of activated alumina recharge water into a surge tank and controlled long term release into POTW.

Based upon the available information, the Agency finds that activated alumina and RO, when considered with the above described waste disposal techniques, still meet the requirements to be considered BTGA. As discussed in the proposed rule, BTGA under section 1412 of the Act is determined on the basis of what is reasonably affordable by large regional water supplies (50 FR 47156). The Agency believes that large systems would not find the costs of disposal of fluoride to be unreasonable, both because of economics of scale and because sewers would generally be available for disposal. In addition, the Agency has determined that the cost of using these technologies including the costs of waste disposal will be acceptable for most public water systems. The Agency notes that, for any system size, the combined cost of activated alumina and the most expensive disposal technology for activated alumina is less than the cost of RO without disposal. RO alone is found to be BTGA; hence, costs of disposal do not alter the findings of BTGA for activated alumina technology. The cost of RO plus waste disposal (which add approximately 10% to costs) is still reasonably affordable by large systems, and, thus, is found to be BTGA. A more detailed discussion of the cost issue can be found in Addendum F to the Technology and Cost Document (EPA, 1986b) and in the Response to Comments Document (1986d).

A number of comments were received on the decentralized treatment alternatives—POE, POU and bottled water. Many of the comments addressed whether POE and POU devices and bottled water should be listed as BTGA. Some of the commenters questioned the Agency's decision not to accept POE, POU or bottled water technologies as BTGA. They maintained that these technologies were more cost effective for small systems than central treatment. Some commenters also requested that the Agency accept POU devices which remove fluoride by distillation as BTGA. Two other comments stated that POE and POU should not be considered to be BTGA because of the difficulty in controlling installation, maintenance, operation, and repair. They also stated that treatment efficiency cannot be assured on a day-to-day basis.

In the fluoride MCL proposal, the Agency proposed that before POE and POU devices could be used to meet the fluoride MCL, the state or EPA was to review the system's proposed plan and impose certain conditions and restrictions (these restrictions were specified in the MCL proposal on volatile organic chemicals published in the November 13, 1985 **Federal Register**). One organization provided detailed comments on these proposed criteria and the National Drinking Water Advisory Council also reviewed them. One commenter stated that that POE and POU devices be allowed on the condition that they do not significantly increase the health risk over centrally treated water.

The Agency proposed that bottled water not be used as a permanent means of compliance and that it only be used in emergency situations or to prevent unreasonable risk as a condition of a variance or exemption. An association of bottled water producers strongly objected to such a restriction on the use of bottled water.

EPA has reviewed the comments submitted regarding the acceptability of decentralized treatment technologies (i.e., POU, POE, bottled water) for compliance purposes and for BTGA findings. Because of the many complex issues raised by the proposal and commenters and the short time available in this rulemaking due to the consent order, the Agency is not able to promulgate regulations addressing decentralized treatment alternatives. EPA will continue to study decentralized treatment and may promulgate final regulations on this matter at a later date, possibly with the final MCL rules for volatile organic chemicals.

Although the Agency identified BTGA in the proposed rulemaking, systems are not limited to those technologies to meet the MCL. Public water systems could use any appropriate central treatment technology to meet the MCL. However, the Agency is not at this time promulgating rules which would govern the use of decentralized technologies (POU, POE or bottled water) for the purpose of complying with the MCL. Use of the POU devices, POE devices, bottled water or any other technology could be required to avoid unreasonable

risk (under conditions specified by States or EPA) in connection with a variance or an exemption or in an emergency situation.

3. *Determination of the MCL.* The Agency has determined that the MCL should be set at the same level as the RMCL. This finding is based upon (1) the determination that analytical methodologies currently exist which are sufficient to measure fluoride levels below the RMCL with acceptable reliability (PQL is 0.5 mg/l), and at reasonable costs (approximately $10 per sample), and (2) the determination that BTGA is able to reduce fluoride levels reported to occur in public water supplies to 4.0 mg/l and below. BTGA can achieve at least 85% reduction in fluoride levels, and the Agency has determined that application of BTGA can more then achieve the RMCL for drinking water supplies; BTGA is sufficient to meet the RMCL for the highest levels of fluoride reported (approximately 10–12 mg/l). Therefore, the Agency is setting the MCL equal to the RMCL.

The Agency received a large number of comments on the proposed MCL of 4.0 mg/l, arguing that EPA should set a higher or lower MCL based on toxicity evidence. Some argued that the risks were high and that a lower MCL should be established; others thought that fluoride should be regulated at a higher level. The statute requires EPA to set the MCL as close to the RMCL as feasible with use of BTGA. No comments were received which disputed the Agency's finding that BTGA is sufficient to achieve the RMCL and that the MCL, therefore, should be set at the same level as the RMCL. The National Drinking Water Advisory Council also reviewed the proposed MCL at its meeting on November 20–21, 1985 and supported the Agency's findings (EPAe).

B. Amendment of the Interim MCL

According to the SDWA, the existing interim regulation for fluoride remains in effect until superseded by the revised regulation (which takes effect 18 months after the revised regulation is promulgated; see SDWA section 1412(b)(5)). Therefore, until the revised regulation supersedes the interim regulation, the interim MCL of 1.4 to 2.4 mg/l would remain effective unless amended. In order to avoid an 18 month period in which the interim MCL is inconsistent with the revised MCL, EPA is amending the interim MCL to be identical to the revised MCL.

An environmental group commented that this amendment removes the normal 18 month delay between promulgation and effective dates during which the new standard can be adjudicated. The commenter stated that under the old standard no consumer of drinking water will be harmed; and the new, less protective, standard will become effective immediately, without sufficient time for adjudication.

The statute does not require that amendments to the Interim Regulations have an effective date 18 months after the date of promulgation. Section 1412(a) only requires that the Interim Regulations have an 18 month effective date when *first* promulgated. The Agency, accordingly, delayed the effective date 18 months for the Interim Regulation when it was promulgated in 1975. However, there is no requirement that amendments to an existing Interim Regulation be delayed 18 months. When an amendment raised an MCL, there is no lead time for systems to procure new technology to comply with a new requirement. It would be unreasonable to place public water supplies in a position where they could be forced to make expensive improvements which would no longer be required after the revised regulation took effect. The Agency notes that the 4.0 mg/l level is adequately protective of public health.

The SDWA requires that the Agency determine the Interim MCL based on analytical and treatment technologies which were available at the time of enactment of the SDWA (in 1974; SDWA § 1412(a)(2)). Because the amended standard raises the permittted level of fluoride, the Agency believes that if methods were capable of meeting the original interim standard, they also would be capable of meeting the higher amended standard. Moreover, a review of the technologies shows that at least activated alumina treatment was available in 1974.

Because relaxing the standard is protective of public health and will not produce any adverse economic effect on public water systems, a short period of time, 30 days, between promulgation and effective date for compliance is appropriate. For further discussion, see the proposed rule (50 FR 47142) and the comment and response document.

States are not required to raise their Interim MCL to 4.0 mg/l. States are explicitly allowed by the Act to maintain more stringent requirements (SDWA § 1413).

C. The SMCL

EPA has determined that the formation of cosmetically objectionable dental fluorosis as a result of exposure to elevated drinking water fluoride levels, in a significant portion of the population, is an adverse effect on public welfare that should be addressed under section 1412(c) of the SDWA. EPA is, therefore, promulgating an SMCL at 2.0 mg/l for portection of public welfare. A detailed discussion of objectionable dental fluorosis appeared in the preamble to the proposed RMCL and to the final RMCL, (50 FR 20164, and 50 FR 47142). Objectionable dental fluorosis is a discoloration and/or pitting of teeth that is caused by excess fluoride exposures during the formative period prior to eruption of the teeth.

The level of the SMCL was set based upon a balancing of the beneficial and undesirable effects of fluoride. Epidemiological studies of dental fluorosis have found that approximately 2.0 mg/l of fluoride in drinking water provides significant protection from dental caries and results in minimal occurrence of moderate to severe dental fluorosis. This level is consistent with recommendations by the Surgeon General, an *ad hoc* committee headed by the Chief Dental Officer of the U.S. Public Health Service, and the previous MCL which was based on this balance.

In setting this secondary standard, EPA is *not* recommending that systems which fluoridate raise the levels of fluoride added to drinking water above the current recommendations of the Centers for Disease Control (HHS, 1985) (0.7–1.2 mg/l). Rather, the Agency is establishing the SMCL as guidance to the public served by systems which have naturally high levels of fluoride.

The Agency is requiring community water systems which exceed the SMCL to notify their consumers. While the SMCL is not a federally enforceable standard, states are free to make the SMCL mandatory for public water supplies. The adverse effects on public welfare that can result from water-related objectionable dental fluorosis should be avoided, and the pubic should be informed of those effects and be able to choose to take appropriate action. As documented in the proposed MCL and SMCL, it is technologically feasible for systems to reduce their fluoride levels to 2.0 mg/l.

A large number of comments were received on the promulgation of the SMCL. The American Medical Association and the American Water Works Association supported setting the SMCL at 2.0 mg/l. One commenter expressed concern that two standards for the same contaminant would be confusing to the public. EPA believes that two standards should not be confusing as they are tied to different effects. The legislative history is clear that contaminants may have public health significance at one level and aesthetic significance at a lower level,

and that EPA may set both primary and secondary regulations for the same contaminant (see H.R. Rep. No. 93–1185 at 16 (1974)).

A State commented that the SMCL was not justified because there was no significant occurrence of dental fluorosis at levels of exposure below 4 mg/l. The Agency disagrees. As explained in the May 14, 1985 **Federal Register** notice proposing the RMCL for fluoride (50 FR 20164), there is evidence that objectionable dental fluorosis occurs in a significant percentage of the population at fluoride concentrations in tapwater below 4 mg/l.

Two health associations commented that some systems which met the old MCL would be in violation of the SMCL. They stated that it would be an undue hardship for those systems to be out of compliance given an effective date of 30 days after promulgation. The Agency does not feel this would be overly burdensome since community water systems which exceed the SMCL are only required to notify the public and the state annually and are not required to perform additional analyses. Systems will be required to notify new customers when their service commences. The text of the notice is presented in figure 1.

D. Variances and Exemptions

1. Variances

The conditions for granting a variance from an MCL are specified in section 1415(a)(1)(A) of the Safe Drinking Water Act. According to the Act, a state may grant variances from MCLs to systems which cannot comply with the MCL because of characteristics of the raw water sources which are reasonably available to large systems and despite application of BTGA (the purpose of applying BTGA is to achieve compliance with the MCL).

In the proposed rule, the Agency stated its belief that, because application of BTGA is expected to allow compliance with the MCL, variances would not be available. Activated alumina and RO are both reasonably affordable for large systems and can achieve over 85 percent reduction in fluoride levels. Thus, systems could meet the MCL and would not qualify for a variance. Therefore, the Agency proposed the findings of BTGA and also proposed its interpretation that no variances were available for the fluoride MCL.

Two commenters argued that variances should be available under the regulations for systems that could qualify for a variance because they could not comply with the MCL despite application of BTGA. No such systems have been identified by commenters or the Agency.

However, after carefully considering the comments requesting that variances be available, the Agency has decided to promulgate a rule that allows variances (New § 142.61). The Agency is still unable to identify systems that cannot comply despite application of activated alumina or reverse osmosis. Nevertheless, it is possible that there may be some systems that the Agency and the commenters are unaware of that cannot comply even after installation and/or use of these technologies. In addition, EPA believes that there may be some systems which cannot meet the MCL for which BTGA is not technically available and effective. In this case, the systems should not be required to install BTGA but should be required to investigate and install treatment methods that are technically feasible and economically reasonable, and that the fluoride reductions obtained would be commensurate with the costs incurred with the installation and use of the treatment method.

The fluoride variance regulations at 40 CFR 142.61 apply to EPA where it has authority to administer the Act. States that have been delegated primary enforcement authority (primacy) for Public Water System Programs under the SDWA and that choose to issue variances must do so under conditions and in a manner which are no less stringent than those described in this section. States may adopt different procedures provided that they are no less stringent in effect than those described in 40 CFR 142.61. States are not required to adopt new authority or regulations by today's rule unless existing variance authorities are less stringent and the state wishes to issue variances.

Appendix B explains the statutory authority governing variances, the basis for § 142.61, the effective date of the variance regulation, and EPA's authority to review state-issued variances.

2. Exemptions

Under SDWA section 1416, exemptions from any MCL may be granted to public water systems if the primacy agency makes certain findings. To grant an exemption, the State or EPA must find that (1) due to compelling factors (including economic factors), the system is unable to comply, and that (2) the system was in operation on the effective date of the MCL, or for newer systems, that no reasonable alternative source is available, and that (3) the exemption will not result in an unreasonable risk to health (SDWA sections 1416(a) (1)–(3)). Under section 1416(b), exemptions from the Interim Regulations were to require compliance by January 1, 1984 (or January 1, 1986 for systems that were regionalizing). Thus, exemptions to the Interim Regulations are no longer available. Exemptions to a revised regulations are to require compliance no later than seven years after the revised regulation takes effect (nine years for systems that are regionalizing). SDWA section 1416(b)(2)(A).

In the preamble to the proposal, the Agency explained that the statute appeared to allow exemptions for all Revised Regulations without regard to whether the contaminant at issue also was regulated under the Interim Regulations. Therefore, the Agency stated that exemptions would be available for the Revised MCL for fluoride.

Two comments were received on the Agency's proposal to allow exemptions. One supported exemptions for the Revised Regulations for fluoride. The second comment challenged the need for an additional 7 years of exemptions when the MCL was being raised. This commenter argued that the proposal would allow a system with a 7 year exemption under the Interim Regulation and a new 7 year exemption under the Revised Regulation a total of 14 years to comply with a fluoride MCL, and that this was contrary to the intent of Congress, as most recently expressed in proposed amendments to the Act. These amendments would allow a one year exemption, with a possible three year extension, except for small systems which may be granted additional extensions. The commenters also argued that since treatment technologies are "reasonably affordable for public water systems regardless of size" (quoting EPA), there is no justification for allowing such a lengthy compliance period.

EPA must promulgate a rule that complies with the SDWA as it is presently written. EPA has determined that the statute, on its face, allows up to seven years to comply with the Revised Regulations. As explained in the preamble to the proposed rule, section 1416(b)(2)(A) allows seven years for compliance with the Revised Regulations and does not provide different exemption periods for those contaminants that were regulated under the Interim Regulations and those that were not. Therefore, the statute clearly provides that systems may apply for exemptions under both the Interim Regulations and Revised Regulations. Because exemptions to the Interim Regulations were to require compliance

by January 1, 1984 (or January 1, 1986), no exemptions to the Interim Regulations may be granted. The Revised Regulations are effective on the date 18 months from the date of today's notice, and exemptions to those regulations are also available beginning 18 months from today. Therefore, there is an 18 month hiatus in which exemptions are not available.

EPA believes that this is the proper interpretation of the statute. There is no legislative history which supports a contrary interpretation. EPA cannot adopt the exemption scheme contained in the proposed legislation (as suggested by the commenter) as that proposed scheme is inconsistent with the present statute.

Although exemptions are available, EPA agrees with the commenter that there are probably few situations where an exemption would be justified. In the few cases where an exemption may be justified, there is unlikely to be justification for a lengthy compliance period. Exemptions are to be granted only where the system cannot comply due to compelling factors (which may include economic factors). After such lengthy opportunity to comply with the lower Interim MCL, EPA believes that there should be few situations where compelling circumstances could still exist, and therefore believes that few, if any, exemptions could be justified. As EPA has stated, the costs of compliance are believed to be reasonable, even for many small systems.

The interim fluoride MCL was promulgated in December, 1975 and was effective 18 months later. Thus, systems have been aware of this requirement for over 10 years; exemptions have been available for a substantial portion of those 10 years to allow systems time to comply. These has been ample time to comply with the previous Interim MCL of 1.4–2.4 mg/l; systems should have been taking steps to reduce their fluoride levels during this period. The Revised MCL and the amended Interim MCL are now higher, making compliance easier for many systems.

States that have been authorized to administer the Safe Drinking Water Act Public Water System program are not required to allow exemptions. If they do, states must issue exemptions "under conditions and in a manner which is not less stringent than the conditions under, and the manner in, which . . . exemptions may be granted," . . . by EPA under the SDWA (SDWA section 1413(a)(4), 42 U.S.C. 300g–2(a)(4)). The Agency believes that although exemptions are legally available, few, if any, exemptions could now be justified under the "compelling factors" requirement. Thus, states are similarly constrained in granting exemptions under their state programs to remain no less stringent than the federal program.

Under section 1416, EPA is empowered to review state issued exemptions and, if the Administrator finds that a State has, in a substantial number of instances, abused its discretion in granting exemptions or failed to prescribe schedules in accordance with the statute, he may revoke or modify those exemptions. SDWA section 1416(d), 42 U.S.C. 300g–5(d). EPA will strictly scrutinize exemptions from the fluoride MCL granted by states and, if appropriate, will revoke or modify improper exemptions.

E. Public Notification

1. MCL and Primary Regulation

Current regulations at 40 CFR 141.32 require that any violation of an MCL, failure to comply with an applicable testing provision, or failure to comply with any monitoring required pursuant to section 1445(a) of the Act be reported to the persons served by the water system. Today's action does not change these requirements for the fluoride MCL, except that it extends these regulatory requirements to the violations of the Revised MCL. Because the notice requirements for violation of an Interim or Revised MCL are imposed by statute, this change to the regulation merely reflects the statutory requirement.

2. SMCL and Secondary Regulation.

The Agency believes that public notification is an essential part of EPA's regulation of fluoride to protect public welfare. From EPA's experience in regulating fluoride, many persons in high fluoride areas are concerned about objectionable dental fluorisis and if alerted, would take steps to avoid it. EPA believes that public notification is justified because the public welfare effects are especially significant, as described in the fluoride RMCL. Therefore, public notice when a system exceeds the SMCL was proposed and is promulgated today.

This public notification requirement is authorized by SDWA section 1445(a), 42 U.S.C. 300j–4(a) and SDWA section 1450(a)(1), 42 U.S.C. 300j–9(a)(1). Section 1445 authorizes the Administrator to require public water systems to "establish and maintain such records, make such reports, conduct such monitoring, and provide such information as the Administrator may reasonably require by regulation to assist him in establishing regulations under this title, . . . in evaluating the health risks . . . or in advising the public of such risks." Section 1450(a)(1) authorizes the Administrator "to prescribe such regulations as are necessary or appropriate to carry out his functions" under the SDWA. These two authorities, together with the requirement that EPA must set NSDWRs, permit the Agency to require public notification where there are serious adverse public welfare effects posed by a contaminant regulated under the Secondary Regulations. EPA regards fluoride differently from the other secondary contaminants. No other contaminant has been placed in the Secondary Regulations for its effects on the human body. Accordingly, EPA finds that public notification is reasonable and necessary.

As noted above, SMCLs are not enforceable nor must they be adopted by states to retain primacy. Because this notification requirement is not related to the primary drinking water regulations, it also does not need to be adopted by the States to retain primary enforcement responsibility. However, the notification requirement is federally enforceable requirement under the Safe Drinking Water Act with which community water systems must comply.

No separate monitoring is required by EPA to support the secondary regulation; monitoring conducted for the primary regulation shall be used to determine compliance with the SMCL. A system shall be determined to be in compliance on the basis of the most recent single sample taken in accordance with the requirements of § 141.23.

EPA proposed requiring quarterly notification of customers when drinking water concentrations exceed the SMCL. The notification consists of mailing the notice prepared by EPA to all billing units and the publication of the notice in the printed media. EPA also proposed requiring the quarterly mailing of notices to customers, States, local dentists, doctors, public officials, and newspapers. EPA has modified the proposed requirements in response to public comments as noted below.

The Agency received a number of comments on the proposed notification requirements. Several states commented that they were against mandatory notification for exceeding the SMCL and that there was no legal basis for such a requirement. They believed that states should be left with the discretion to require notification. The Agency believes that public notification is an essential part of the fluoride regulations and that the SDWA provides sufficient basis for the notification requirements.

The American Medical Association (AMA), the American Water Works Association (AWWA), and a state supported the notification requirement, but commented that quarterly notification would be excessive. The Agency agrees that there is little justification for notification as frequently as once every three months and the final rules require only annual notification for the SMCL. In order to prevent new customers from receiving water without notification for a period up to one year, the final rules require notification of new billing units at the time that service commences. EPA has determined that between 6 to 12 months of exposure to fluoride in drinking water above the SMCL may cause moderate to severe dental fluorosis in some children. In the Agency's experience, notices of this type are likely to be effective in alerting the public, but if not reissued periodically, they are forgotten. Therefore, the Agency believes that annual notification is necessary to maintain the appropriate level of awareness.

A medical association, a state, and a gas utility company commented that the proposed notification requirements were unclear and would pose an unreasonable burden on small systems. Small systems (e.g., trailer parks) near large towns would be required to send copies of the notice to large numbers of doctors and dentists.

The Agency acknowledges that some flexibility in the notification requirements for the SMCL will be necessary for small systems. Therefore, the Agency is specifying only minimum requirements for notification. Systems must notify the states after the initial sample is taken. Systems must notify billing units annually, and new customers must be notified when they begin service. States and localities may require more extensive or frequent notification, including prominent posting in public places and notification of dentists, doctors and local health officials.

One commenter argued that non-community systems should not be required to give public notice of SMCL exceedance. EPA is deferring the decision on whether to require non-community systems to notify the public. As explained below, coverage of non-community water systems under the Primary Regulations is still being considered and raises issues similar to those raised by regulation of these systems under the SMCL. Therefore, the Agency is today requiring only community public water systems to notify the public if the SMCL is exceeded; EPA will decide at a later date whether to require non-community systems to notify.

The costs of notification will not be significant to individual water systems or to the country as a whole. The Agency estimates that approximately 1300 community water systems will be required to notify under this rule. The majority of these systems are currently required to notify customers every quarter since they are out of compliance with the existing National Interim Primary Drinking Water Regulation (NIPDWR). Some communities currently in compliance with the NIPDWR with concentrations between 2.0 and 2.4 mg/l would now be required to notify. Some costs could be incurred by a few systems which bill by postcard since the required notification would require the mailing of an envelope. This additional cost of notification for such systems has been considered and has been found to be minimal and reasonable.

The Agency received a number of comments on the wording of the proposed notice. Opinion over the notice language was divided. One medical association approved of the notice language, while two others were critical of what they considered to be overstatements on the potential risks of fluoride. The Centers for Disease Control and a gas utility company requested specific revisions in the wording. The Agency has considered the comments and has made changes that it believes to be appropriate. Figure 1 presents the revised notice. For detailed responses to the comments, see the Comment and Reponse Document (EPAd).

Figure 1.—Public Notice

Dear User, the U.S. Environmental Protection Agency requires that we send you this notice on the level of fluoride in your drinking water. The drinking water in your community has a fluoride concentration of [1] milligrams per liter (mg/l).

Federal regulations require that fluoride, which occurs naturally in your water supply, not exceed a concentration of 4.0 mg/l in drinking water. This is an enforceable standard called a Maximum Contaminant Level (MCL), and it has been established to protect the public health. Exposure to drinking water levels above 4.0 mg/l for many years may result in some cases of crippling skeletal fluorosis, which is a serious bone disorder.

Federal law also requires that we notify you when monitoring indicates that the fluoride in your drinking water exceeds 2.0 mg/l. This is intended to alert families about dental problems that might affect children under nine years of age. The fluoride concentration of your water exceeds this federal guideline.

Fluoride in children's drinking water at levels of approximately 1 mg/l reduces the number of dental cavities. However, some children exposed to levels of fluoride greater than about 2.0 mg/l may develop dental fluorosis. Dental fluorosis, in its moderate and severe forms, is a brown staining and/or pitting of the *permanent* teeth.

Because dental fluorosis occurs only when *developing* teeth (before they erupt from the gums) are exposed to elevated fluoride levels, households without children are not expected to be affected by this level of fluoride. Families with children under the age of nine are encouraged to seek other sources of drinking water for their children to avoid the possibility of staining and pitting.

Your water supplier can lower the concentration of fluoride in your water so that you will still receive the benefits of cavity prevention while the possibility of stained and pitted teeth is minimized. Removal of fluoride may increase your water costs. Treatment systems are also commercially available for home use. Information of such systems is available at the address given below. Low fluoride bottled drinking water that would meet all standards is also commercially available.

For further information, contact [2] at your water system.

[1] PWS shall insert the compliance result which triggered notification under this Part.

[2] PWS shall insert the name, address, and telephone number of a contact person at the PWS.

F. Reporting Requirements

The Interim Regulations, 40 CFR 141.31, currently require public water systems to report monitoring data to States within specified time periods. This action does not change those requirements for fluoride.

G. Compliance Monitoring Requirements

Compliance monitoring is being required for the purpose of determining if public water systems are distributing drinking water that meets the MCL. The Agency has determined that fluoride is a Tier II contaminant in the three tiered approach presented in the Phase II Advance Notice of Proposed Rulemaking, published on October 5, 1983 (48 FR 45502). Tier II contaminants are those which are of sufficient concern to warrant national regulation (MCLs) but which occur in a predictable fashion, justifying flexible national minimum monitoring requirements to be applied by State authorities.

EPA has determined that the presence of excess fluoride contamination of drinking water is normally the result of natural factors and that the occurrence of fluoride is highly predictable based upon geological and historical monitoring records. Under the Interim Regulations for fluoride, monitoring has

been required for all public water systems since 1976. Therefore, considerable historical information is available on drinking water fluoride concentrations. EPA believes that systems which can demonstrate to the State that they do not exceed the MCL should not be required to monitor, except on an infrequent basis to confirm that fluoride levels have not changed significantly.

EPA is retaining the monitoring frequency requirements for fluoride now in force under 40 CFR 141.23, with modifications to allow greater state flexibility. The existing regulation requires community water systems using surface waters to monitor yearly, and those using ground water systems to monitor every three years (40 CFR 141.23(a)(1)–(3)). The Agency finds that these requirements continue to be well suited for fluoride monitoring of public water supplies; they allow detection of any increases in contaminant levels before there is a significantly increased risk of harm. However, in order to provide greater flexibility to the states, EPA is granting the authority to the states to reduce sampling to a minimum of once every 10 years if the state determines that the system is not likely to exceed the MCL. States, as part of their determinations, must consider factors such as levels reported during previous monitoring; the degree of variation reported in the monitoring levels; factors which may affect fluoride levels, such as changes in pumping rates for ground water supplies, operating procedures, source of water, changes in stream flows; and other relevant factors. Where historic levels have been close to but below the MCL or where there is particular concern about the quality of the analytical results, states may want to wait to reduce monitoring until they have analytical results produced by laboratories that have met the laboratory performance requirements.

States also have the authority to require monitoring more frequently than the minimum (i.e., yearly for surface sources, every three years for ground water sources). States would consider the same factors listed above in making this decision. More frequent monitoring would be especially appropriate initially for new systems, systems which begin use of new wells or water intakes, or systems for which insufficient monitoring data exist for determining that the system is not likely to exceed the MCL.

The Agency received a number of comments on the proposed monitoring requirements. In general, the comments supported the increased state flexibility. A municipal water utility commented that there should not be any monitoring requirements for systems which historically have been shown to be problem free. The Agency believes that monitoring at least once every 10 years is reasonable because some monitoring is necessary to deal with unforeseen events and changes of conditions. Moreover, the costs of monitoring once every 10 years are minimal. An environmental group and a medical association objected to the proposed monitoring on the basis that it would decrease the protection to the public. The commenters did not provide any basis for asserting that levels could change significantly so that public health risks would significantly increase. Only in unusual circumstances should the levels change significantly. Where there is some possibility of changing circumstances, states may wish to require monitoring more frequently. The Agency believes that systems with fluoride levels that have been historically below the MCL of 4.0 mg/l should not be required to conduct frequent monitoring.

EPA requested comments on whether monitoring should be required of systems which practice fluoridation. The Centers for Disease Control (CDC) stated that they were against mandatory monitoring of fluoridating systems for the following reasons:

- A monitoring system currently exists (i.e., CDC recommends daily monitoring),
- CDC has a study of this monitoring program in progress,
- Historical records indicate that overfeeds are rare,
- Costs for additional monitoring will be burdensome.

The American Public Health Association and the Georgia Department of Natural Resources also were against such monitoring. The Agency agrees with these comments and is not setting additional monitoring for systems which practice fluoridation. However, EPA strongly encourages systems which practice fluoridation to follow the monitoring recommendation of the Centers for Disease Control (HHS 1985). EPA strongly encourages states which have not done so to require at least daily monitoring for systems which practice fluoridation.

Under the proposal, systems would be required to sample at points in the distribution system which are representative of households taps. At a minimum, separate samples from the distribution system were proposed to be required which are representative of water contributed by each individual source (well or surface water intake).

The Agency received a number of comments on this proposal. The majority of the comments objected to the proposal for a number of reasons. One commenter objected that because some systems might have as many as 20–30 wells, enforcement of the proposed monitoring of representative taps would be an unreasonable burden on the states. Another commenter said that if measurements were taken at the tap, it could be impossible to know what well was serving what tap because of variable pumping patterns.

The Agency disagrees with the comment that the proposed monitoring would be a burden to systems with large numbers of sources. The costs of monitoring for fluoride are relatively low and should be affordable even for multiple well systems since samples are only to be taken yearly (in the most frequent situation required by rule). In general, systems with large numbers of sources serve a large number of people. Because fiscal resources available to systems increase with system size, the Agency does not feel that the proposed monitoring will pose a burden on such systems. While some large systems may have a large number of sources, smaller systems generally will have only one or two. Because fluoride levels exceeding the MCL will occur chiefly among smaller systems, the Agency believes that neither the monitoring itself nor the enforcement of the rule will present an unreasonable burden on either water supplies or states, respectively.

The Agency does not agree with the comment that monitoring for different portions of a system served by multiple sources may be problematic. Therefore, consistent with the proposal, the Agency is promulgating a requirement that where the system draws water from more than one source and does not combine the sources before distribution, the system must sample at each entry point to the distribution. See § 141.23(g)(1)(ii).

EPA is also aware that some systems use multiple sources and combine those sources prior to distribution. As noted by the commenter, it could be impossible to know which source is serving which tap due to system configuration or variable pumping patterns. The Agency believes that multiple sources used by the same system can have different fluoride levels. To address this situation, the Agency is promulgating a requirement that systems must sample at an entry point to the distribution system representative of the maximum fluoride

levels occurring under normal operating conditions. Sampling at the entry point to the distribution systems is appropriate for each source or where the sources are combined at or before the entry point. Because sources with differing fluoride levels may be used at different times, a monitoring scheme must account for the possibility that fluoride levels may vary.

EPA considered but rejected an averaging scheme. Averaging schemes may mask the fact that water with fluoride levels exceeding the MCL was being delivered for much of the year. Instead, the Agency believes that samples should be taken to reflect the highest levels of fluoride delivered to consumers during normal operations. By restricting the sampling period to normal operations, the Agency is excluding monitoring during abnormal conditions when the fluoride levels may be abnormally low or high (e.g., during accidents or breakdowns to treatment equipment). This scheme should provide a reasonable estimate of the maximum fluoride concentrations delivered by the system.

Compliance with both the SMCL and the MCL will be determined for each sampling point in a system. If any of the points of a sampling system are found to be out of compliance with the SMCL or the MCL, that portion of the water system shall be considered to be out of compliance. If a portion of a water system is out of compliance, then the entire system is deemed to be out of compliance.

This method of determining compliance is new and provides a higher degree of understanding regarding exposure than the previous method. The Agency intends to adopt a similar scheme for the other Revised Regulations.

The Agency proposed that the new monitoring rule would take effect 30 days from the date of today's notice and is promulgating the regulation with an effective date of 30 days. As explained above, EPA is establishing an 18 month effective date for the laboratory performance requirement.

H. Non-community Water Systems.

Under the Interim Regulations, "community water systems," as defined in 40 CFR 141.2(e)(i), were required to comply with the interim MCL. In the proposed National Primary Drinking Water Regulations for volatile organic chemicals (50 FR 46880, November 13, 1985), EPA considered redefining community water systems to include certain non-community water systems that had not been previously covered. The purpose was to include non-residential populations of more than 25 people who, because of regular long-term exposure, might incur similar long-term risks of adverse health effects as residential populations. It included systems serving more than 25 persons in such places as workplaces, offices, and schools. That notice should be consulted for further detail.

Under the proposed rule for fluoride, the Agency would have granted states the flexibility to require such systems to meet the fluoride rules promulgated, herein, on a case-by-case basis. The proposal to include a non-community system was to be made after a review of the number of persons served, their expected drinking water consumption, the levels of fluoride, the number of months the system is used by the same persons, and other factors relevant to the risks that might be incurred. The basic criterion would have been whether users of these systems would be exposed to risks of crippling skeletal fluorosis and/or moderate to severe dental fluorosis similar to those posed by community water systems with residential populations and with similar fluoride levels.

The Agency received several critical comments on this proposal. Several comments stated that the extention of the MCL to schools would conflict with the school fluoridation program by the Centers for Disease Control (CDC). CDC currently recommends that schools in areas with low levels of fluoride add fluoride to their drinking waters supplies at levels up to 5.4 mg/l. CDC has calculated that a level of 5.4 mg/l would provide a daily consumption of fluoride equivalent to public water systems that fluoridate to the optimum level for caries prevention. Studies have not demonstrated increased levels of objectionable dental fluorosis in children covered by the program.

The Agency recognizes that the redefinition of community water system to include certain non-community water systems raises a number of complex technical and administrative issues (for fluoride and other contaminants to be addressed in the Revised Regulations) for public water systems, states and the Agency. Therefore, the Agency has decided not to take any action on this issue in this rule. Non-community systems are not required to comply with the fluoride MCL by this rule. The Agency believes that it is more appropriate to consider the need for regulating fluoride in non-community water systems as part of the larger decision whether to extend any or all Revised Regulations to such systems.

Deferring action on redefinition will also allow the Agency to further study the issue and comments submitted on this rule and those on the proposed rule for volatile organic chemicals. The volatile organic chemicals proposal is scheduled for promulgation in the Fall of 1986 and may address non-community water systems.

It should be noted that states can adopt requirements affecting public water systems which are more stringent than those of the federal program. As such, states have been free to require non-community water systems to meet any MCL and may do so at any time. This could be accomplished in the same manner as described in the proposed rule: redefining the community water system to include certain (or all) non-community water systems. Thus, states could now adopt the approach EPA proposed.

III. Effective Dates

Two regulations have an effective date of 18 months from today's date: the Revised MCL (§ 141.61(b)) and the laboratory performance requirement (§ 141.23(g)(4)). This date is (insert date 18 months from date of publication that is a weekday). By statute, exemptions from the Revised MCL may be granted beginning on the same day. All the other regulations promulgated in this final rulemaking are effective 30 days from today's date. This date is (insert date 30 days from date of publication).

IV. Economic Impact Analysis

The economic impact analysis supporting this final rule is contained in "Economic Assessment of Reducing Fluoride in Drinking Water," as amended (EPA, 1986c). The report presents estimates of the benefits and costs of regulatory alternatives. Also included are analyses required by the Regulatory Flexibility Act and the Paperwork Reduction Act. The purpose of the assessment was to determine overall economic impacts of the regulations. The addendum to the assessment responds to comments made during the public comment period. There has been no significant change in the initial assessement. Approximately 1300 public water systems have fluoride above 2 mg/l, and about 300 systems have concentrations above 4 mg/l. If all systems with fluoride levels greater than 4 mg/l reduce their fluoride concentrations to 4 mg/l, the total cost would be approximately $43 million or about $2.9 million per year. Systems with recent data indicating compliance, generated pursuant to the Interim Regulation, are not required to monitor until ten years from the date of their last sample, at the discretion of the State. If

it is assumed that most states will reduce the frequency of monitoring for systems with less than about 2 mg/l of fluoride and that those systems which exceed 2 mg/l on their last interim sample were required to phase-in sampling under the one and three year schemes for surface and ground waters, respectively, then the annual costs for monitoring under this minimum federal requirement would be approximately $170,000. The cost of notification would be minimal because most of the systems that would be required to notify under this proposal are already required to do so under the existing Interim Regulation.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirements of a Regulatory Impact Analysis. This action does not constitute a "major" regulatory action because it will not have a major financial or adverse impact on the country. This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Executive Order 12291 does not distinguish between the legislative authority of various statutes but requires the same kinds of information on all actions. Therefore, some of the information was collected to meet the specific requirements of E.O. 12291 and was not used in determining the MCL.

The Regulatory Flexibility Act requires EPA to explicitly consider the effect of regulations on small entities. If there is a significant effect on a substantial number of small systems, means should be sought to minimize the effects. With respect to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 602 *et seq.*, today's action will not have a significant effect on a substantial number of small entities. The Small Business Administration would define a small water utility as one which serves fewer than 50,000 people. There are about 58,500 systems which are considered small systems under this definition. Of these, fewer than 300 are likely to have contamination levels greater than the MCL. This rule would regulate less than 1 percent of the "small" systems and this does not constitute a substantial number of small systems.

The Paperwork Reduction Act seeks to minimize the reporting burden on the regulated community as well as minimize the cost of federal information collection and dissemination. Monitoring pursuant to today's action will indicate if a water system is in compliance with the new standards. The monitoring requirement is a reduction to the existing requirements and constitutes a reduction in the reporting burden.

OMB has not approved the Information Requirements for collection of information under the Fluoride regulation, and they are not effective until we receive OMB clearance.

V. References and Public Docket

The following references are included in the Public Docket together with other correspondence and information. The Public Docket is available for viewing in Washington, DC at the address listed at the beginning of this notice. All public comments received on the proposal are included in the Docket.

Eisenberg, 1984—Eisenberg, T.N., Middlebrook, E.J., A Survey of Problems With Reverse Osmosis Water Treatment, *J.A.W.W.A.*, August, 1984.

EPAa—U.S. Environmental Protection Agency, Criteria and Standards Division, Monitoring for Fluoride in Drinking Water, Revised, March, 1986.

EPAb—U.S. Environmental Protection Agency, Criteria and Standards Division, Technologies and Costs for the Removal of fluoride from Drinking Water, Updated February 1986.

EPAc—U.S. Environmental Protection Agency, Office of Program Development and Evaluation, Economic Impact Assessment of the Proposed Fluoride Regulation, November, 1986, with Addendum, March 1986.

EPAd—U.S. Environmental Protection Agency, Criteria and Standards Division, Responses to Comments Received on the Proposed Fluoride MCL and SMCL November 14, 1985, March, 1986.

EPAe—U.S. Environmental Protection Agency, Transcript of the Meeting of the National Drinking Water Advisory Council on November 20–21, 1985.

HHS—U.S. Department of Health and Human Services, Centers for Disease Control, Center for Prevention Services, Dental Disease Prevention Activity, *Water Fluoridation A Manual for Engineers and Technicians*, October, 1985.

Sorg, 1980—Sorg, T.J., Forbes, R.W., Chambers, D.S., Removal of Radium-226 from Sarasota County, Fla., Drinking Water by Reverse Osmosis, *J.A.W.W.A.*, April 1980.

VI. Appendix A—Addresses of EPA Regional Office

I. JFK Federal Bldg., Boston, MA 02203, Phone: (617) 223–6486, Jerome Healy

II. 26 Federal Plaza, Room 824, New York, NY 10278, Phone: (212) 264–1800, Walter Andrews

III. 6th & Walnut Streets, Philadelphia, PA 19106, Phone: (215) 597–9873, Bernie Sarnowski

IV. 345 Courtland Street, Atlanta, GA 30365, Phone: (404) 881–3781, Robert Jourdan

V. 230 S. Dearborn Street, Chicago IL 60604, Phone: (312) 886–6176, Joseph Harrison

VI. 1201 Elm Street, Dallas, TX 75270, Phone: (214) 767–2620, James Graham

VII. 726 Minnesota Ave., Kansas City, KS 66101, Phone: (913) 234–2815, Gerald R. Foree

VIII. 1860 Lincoln Street, Denver, CO 80295, Phone: (303) 293–1413, Marc Alston

IX. 215 Fremont Street, San Francisco, CA 94105, Phone: (415) 974–8076, Leslie Ragle

X. 1200 Sixth Avenue, Seattle, WA 98101, Phone: (206) 442–1225, Jerry Opatz

VII. Appendix B—Variances

a. Requirements of the Safe Drinking Water Act for Variances

Under section 1415(a)(1)(A) of the SDWA, EPA or a primacy state may grant variances from National Primary Drinking Water Regulations which, because of high levels of a contaminant, cannot meet an MCL despite application of best technology, treatment techniques, or other means which the Administrator finds are generally available (BTGA) (taking costs into consideration). In other words, a system must not be able to comply with the MCL even after installing BTGA because of the characteristics of the raw water sources. Variances or exemptions are only appropriate for systems that do not comply with the MCL. Before a variance can be granted, the state must find that the variance will not result in unreasonable risk to health.

If EPA or a primacy state grants a variance, it shall prescribe within one year a schedule for (1) compliance with the MCL and (2) implementation of such additional control measures during the period that the variance is in force. Before a prescribed schedule may take effect, EPA or the state must provide notice and opportunity for a public hearing on the schedule. A schedule is to require compliance as expeditiously as practicable. Subsections 1416(a)(1)(B)–(E) provide additional administrative requirements for issuing variances. Section 1414 of the Act requires systems receiving variances to give public notice of such variance to the persons served by it (SDWA § 1414(c)(2), 42 USC § 300g–(c)(2)).

b. Identification of Best Technologies Generally Available for Purposes of Fluoride Variances

In § 142.61(a), EPA identifies BTGA for purposes of variances to the fluoride regulation as activated alumina and reverse osmosis treatment technologies. Section 1415 of the Act authorizes EPA to identify BTGA. These technologies are the same as those identified under § 1412 as BTGA for purposes of determining the MCL for fluoride. The basis for identifying these technologies as BTGA is described at length in this rule and the preamble of the proposal.

EPA solicited comment on its finding that activated alumina and reverse osmosis were BTGA for purposes of section 1415 variances. No comments were received on identification of these technologies as BTGA. The Agency also stated that the technologies were reasonably affordable for all systems regardless of size. The Agency invited comment on whether BTGA for purposes of section 1415 should differ depending on size of the system, economic, or technical factors. The Agency received no comments suggesting that other centralized technologies should be identified as BTGA under section 1415 that BTGA should vary depending on system size, or that no BTGA was available for small systems.

Although the Agency received comments that some small systems could not afford to install reverse osmosis or activated alumina, these comments did not provide any economic data or technical support for their position. Even if some small systems do not find these technologies affordable, they are still affordable for large systems, and this finding was not challenged.

The Agency explained in the proposal that its determination of BTGA for section 1415 relied on the findings of BTGA for section 1412. No commenter challenged this reliance.

c. Inability to Meet MCLs Despite Application of Best Technology Generally Available; Determination of Availability and Effectiveness

In § 142.61(b), EPA stipulates how it or a primacy state that issues variances shall make the determination as to whether a system shall be required to install and/or use a best generally available treatment method. Generally, a system must install and/or use BTGA to receive a variance. Under limited circumstances, a system may receive a variance without installing and/or using BTGA if the identified BTGA technologies are not available and effective for it.

Before issuing a variance, the variance-issuing authority must find that a variance is warranted, i.e., that because of the characteristics of the raw water source, the system will not be able to meet the MCL despite application of best generally available treatment methods (Section 1415(a)(1)(A) 40 CFR 142.40(a) and analogous primacy state regulations). This interpretation was explained in the proposed rule and the Agency received no comment on it. This has always been the Agency's interpretation of this position (see 45 FR 50833–35 (July 31, 1980) and 50 FR 47163–64 (November 14, 1985); also 50 FR 46918 (November 13, 1985)). While the system may have already installed the treatment method, the finding could be made prior to such installation.

The treatment methods should be in place to demonstrate that non-compliance is attributable to poor source water quality or if the installation is not yet complete, the system may demonstrate non-compliance based on studies indicating that the treatment methods will not allow compliance after they are operational. In some cases, additional time may be needed to complete installation of the required treatment methods. However, EPA expects any such compliance schedule would require the expeditous installation of such treatment methods. The important fact is that the "available and effective" methods be installed in order to reduce the levels of fluoride, either before the variance is issued or within a short and specified period of time. It is for this reason that § 142.61(b) requires the system to "install and/or use" one of the identified methods.

A system which cannot comply with the MCL due to high contaminant levels in the water system must install and/or use one of the technologies identified as BTGA, unless it is determined that both are not "available and effective." Under the criteria in § 142.60(b), a treatment method would not be considered to be "available and effective" for an individual system if the treatment method would not be "technically appropriate and technically feasible" for that system, or would only result in a marginal reduction of fluoride for that system. By "technically appropriate and technically feasible" the Agency means that the proposed treatment method would be technically compatible with treatment methods then in use by the system and represent sound water utility engineering judgment applied to that system. By use of the term "marginal reduction," the Agency means that a system should not be required to install and use a treatment method where the reduction in fluoride would be small relative to the existing levels of fluoride or small relative to the reduction available by use of the other listed best generally available treatment method. The Agency does not intend that systems be required to use treatment methods that will give only small or insignificant reductions in fluoride under a variance. It is the burden of the system to show that the treatment methods are not available and effective. EPA intends to publish additional guidance on the issuance of variances, including the role of costs in determining technical appropriateness and feasibility.

Inasmuch as the costs of installation and use of both of the listed treatment methods have been considered by the Agency and are anticipated to be affordable, it is not anticipated that such costs should be a deterrent to requiring a system to install and use any of such treatment methods. The determinations respecting the availability and effectiveness of either of the listed treatment methods necessarily would be made on a case-by-case basis, considering the operating characteristics and capabilities of the system applying for a variance. If EPA or a primacy state determines that one of the above listed BTGA is "available and effective" (as defined in § 142.60(b)) for a system and the system has not completed installation of the treatment method at the time it applies for a variance, EPA or the primacy state may grant the variance accompanied by a compliance schedule for the expeditious installation of such treatment method.

EPA wishes to emphasize that the Administrator is specifically charged with the responsibility of "taking costs into consideration" in establishing primary drinking water regulations and in making determinations as to which treatment methods are BTGA for meeting SDWA regulations. If a system is unable to afford to install and/or use BTGA due to compelling factors, it must apply to the primacy agency for an exemption which specifically allows for the consideration of economic factors and authorizes the granting of time for the system to raise additional captial to install the necessary treatment. As noted below, EPA believes that there are few systems that will be able to demonstrate compelling economic factors which justify an exemption from the 4.0 mg/l MCL for fluoride. The grounds for not installing a BTGA method are limited to system-specific technical problems of availability and effectiveness.

EPA believes that the criteria in § 142.61(b) authorizing the primacy agency to relieve a system of an obligation to install and/or use a treatment method that is not available and effective for that system are both reasonable and necessary. Systems should not be expected to install treatment methods that would interfere with other unit operations that control health-related contaminants, treatment methods that would be operationally unstable due to existing treatment configurations or treatment methods that would only reduce fluoride by a

negligible or trivial amount. There is a need for flexibility in the variance process and EPA believes it process includes the right amount of flexibility while ensuring the installation of appropriate treatment methods.

In the proposed rule, EPA solicited comment on how to treat the situation in which a system had no technology generally available (for economic reasons), and whether variances should be allowed that did not require installation of a BTGA (see 50 FR 47164, November 14, 1985).

No comment was received on these issues. The Agency's final rule does allow the issuance of variances where BTGA is not available and effective for technical reasons. As explained above, the Agency believes that the identified BTGA is reasonably affordable for large systems and for many small systems.

d. Required Examination and Installation of Alternate Treatment Methods

As explained above, systems that are candidates to receive variances must either (1) not be able to comply with the MCL even though they have installed or with install BTGA or (2) be in the small class of systems for which BTGA is not available and effective. In either case, the system will still be out of compliance with the MCL. Section 142.61 (c) and (d) are intended to address this situation and to implement SDWA § 1415(a)(1)(A) (i) and (ii).

The Act requires EPA or the state to prescribe within one year of the date the variance is issued, a schedule for (1) compliance (including increments of progress) and (2) implementation by the system of such control measures as may be necessary (SDWA § 1415(a)(1)(A) (i) and (ii)). These provisions are aimed at bringing the system into compliance with the MCL as soon as practicable. To adopt a reasonable schedule to ensure compliance, the Agency believes it is appropriate to require systems to expeditiously investigate and install those treatment technologies that are technically feasible, economically reasonable, and will achieve fluoride reductions commensurate with the costs of installation and operation. As an example of economic reasonability, the Agency believes that the costs of BTGA as estimated in this rulemaking are economically reasonable.

Therefore, in addition to the two best generally available treatment methods, EPA in § 142.61(c) has identified for investigation and possible installation seven additional treatment methods. These seven methods are not identified as "generally available" pursuant to Section 1415(a)(1)(A). These treatment methods, however, may be available for some systems.

Section 142.61(d) specifies criteria that EPA and primacy states shall apply in determining what requirements to include in a compliance schedule accompanying a variance. Such schedules of compliance may include a requirement that the system examine other treatment methods identified below to determine their availability, feasibility, cost, and effectiveness. Such an examination may include engineering studies, and for potentially applicable technologies, pilot projects, to determine accurately what reduction in fluoride levels could be achieved by the treatments.

Section 142.61(c) provides that a schedule shall be issued that may require examination of the listed technologies. The Act and the regulations require a compliance schedule as a condition of receiving a variance. Requiring examination of the listed technologies is not mandatory because some systems will already have chosen a specific technology which will allow compliance. In these cases, further study may not be necessary.

In prescribing compliance schedules, EPA and primacy states shall consider the potential efficacy of the treatment methods and avoid the requirement for studies of methods that do not have the probability of significantly reducing the levels of fluoride. The additional treatment methods that EPA believes should be considered as part of a compliance schedule are listed in §142.61(c) and are:

(1) Modification of lime softening
(2) Alum coagulation
(3) Electrodialysis
(4) Anion exchange resins
(5) Well field management
(6) Alternate source
(7) Regionalization.

These technologies and alternative means of compliance are described briefly in the preamble to the proposal and in some detail in the cost and technologies documents which accompanied the proposed and final fluoride rules. Little comment on these alternative means of compliance was received.

This list is not intended to be inclusive of all potentially available or effective treatment methods and development of new technologies is encouraged. Systems always have the option of proposing studies of other methods. Based on studies by the system and other available information, EPA or a primacy state shall decide whether any of the identified above treatment methods would achieve a reduction in fluoride levels justifying use of the method.

This regulation, by itself, does not require installation or use of any of these seven treatment methods for the granting or continuation of a variance. Section 142.61(d) provides, however, that EPA or a primacy state may decide for a particular system that such treatment methods (or other treatment methods) are technically feasible and economically reasonable, and that the fluoride reductions obtained would be commensurate with the costs incurred with the installation and use of the treatment method. In such a case, EPA or the primacy state shall require, as part of a compliance schedule, installation or use of such methods by the system. The Act requires that a compliance schedule must include a schedule for implementation of control measures. This provision is not intended to allow a reopening of the health basis of the standard on a case-by-case basis but rather to allow reasonable judgments on the cost and effectiveness of major changes in sources or treatment.

By allowing consideration of reductions commensurate with costs, EPA is reasonably accounting for the costs and efficiency in requiring control measures beyond BTGA. The Agency notes that case-by-case economic considerations are not appropriate in determining whether a system must use a best "generally available" treatment method. However, the seven treatment methods identified in §142.61(c) were not determined to be BTGA. Therefore, case-by-case cost considerations are not precluded by the SDWA. The Agency listed the treatment methods in §142.61(c) for use by EPA and primacy states in determining what should be required of a system that has applied each available and effective treatment method listed in §142.61(a) (or for which no BTGA is available and effective) and still is not in compliance with the MCL. Section 1415(a)(1)(A) requires the primacy agency to prescribe a compliance schedule for such a system, with increments of progress designed to bring the system into ultimate compliance. At this stage, the Agency believes it is appropriate to consider the reasonableness of the cost of using additional (not "generally available") treatment methods and in requiring a reduction in fluoride commensurate with the costs of installing and/or using such treatment methods. This is consistent with the SDWA and represents sound regulatory judgment. Costs would be considered reasonable if they were similar to those that were considered

reasonable in the determination of BTGA.

The only significant difference between the variance rule for trihalomethanes (THM) and the variance rule for fluoride is the THM variance rule precluded EPA and the states from requiring systems to install methods not listed in the regulation in §142.60 (a) and (c). (See 40 CFR 142.60(d) and preamble at 48 FR 8406–413 and 47 FR 9796–798.) This prohibition was promulgated because of a concern that states might mandate installation of other treatment methods which the Agency believed should not be required as part of a variance. EPA does not have this concern for other fluoride technologies that are not listed.

Under section 1415 (a)(1)(A)(ii), EPA or the primacy state is to prescribe a schedule for implementation of control measures to reduce contaminants which, under the regulation, includes examination and installation of appropriate technologies. The term "control measures" also includes any other interim steps that may be necessary to prevent unreasonable risks until a treatment technology is installed. Thus, EPA or the primacy state may require the system to implement interim control measures, such as provision of bottled water or use of point-of-use or point-of-entry devices, to reduce exposure to fluoride as a condition and requirement of granting the variance.

e. Effective Date of Variance Regulation

Variances to the Interim Regulation have been available by statute since the Interim Regulation became effective in 1977. Variances do not have a statutory expiration date and therefore continue to be available for the Interim Regulation. Variances from the Revised Regulation are available by statute when the Revised Regulations become effective October 2, 1987.

The variance regulation applies to both the Interim Regulation and the Revised Regulation. The Agency sees no benefit from delaying the variance regulation: if variances are to be issued, they should comply with the requirements of §142.61. This effective date is consistent with the effective date discussed in the proposal (see 50 FR 47164 (November 14, 1985)).

f. EPA Review of State Variances

Under SDWA § 1415(a)(1)(F), EPA is authorized to review variances issued by states. Where the state has abused its discretion in granting variances in a substantial number of cases, the Administrator is authorized to revoke the variances and propose revised schedules or other requirements (SDWA § 1415(a)(1)(G)). Because most, if not all, systems can comply using BTGA, a variance will rarely be appropriate. EPA will review state issued variances.

Existing variances may not comply with the new variance regulations. In this case, states will need to amend their variances so that they are not less stringent than those that would be issued under § 142.61. Such variances should be amended expeditiously.

VIII. List of Subjects

40 CFR Part 141

Chemicals, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 142

Administrative practice and procedure, Chemicals, Radiation protection, Recordkeeping requirements, Intergovernmental relations, Water supply.

40 CFR Part 143

Chemicals, Water supply, Reporting and recordkeeping requirements.

Dated: March 15, 1986.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, Title 40, Code of Federal Regulations, is amended as set forth below.

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for Part 141 continues to read as follows:

Authority: 42 U.S.C. 300g–1, 300g–3, 300j–4, and 300j–9.

2. Section 141.2 is amended by adding a new paragraph (v) to read as follows:

§ 141.2 Definitions.

* * * * *

(v) "Performance evaluation sample" means a reference sample provided to a laboratory for the purpose of demonstrating that the laboratory can successfully analyze the sample within limits of performance specified by the Agency. The true value of the concentration of the reference material is unknown to the laboratory at the time of the analysis.

3. Section 141.6 is amended by adding a new paragraph (f) to read as follows:

§ 141.6 Effective dates.

* * * * *

(f) The regulations set forth in § 141.11(c) and § 141.23(g) are effective May 2, 1986. Section 141.23(g)(4) is effective October 2, 1987.

4. Section 141.11 is amended by revising paragraph (c) as follows:

§ 141.11 Maximum contaminant levels for inorganic chemicals.

* * * * *

(c) The Maximum Contaminant Level for fluoride is 4.0 mg/l. See 40 CFR 143.3, which establishes a Secondary Maximum Contaminant Level at 2.0 mg/l.

* * * * *

5. Section 141.23 is amended by revising paragraphs (b) and (f)(10), republishing footnotes 1 through 4 and adding footnotes 5 through 7 to (f) and by adding a new paragraph (g) to read as follows:

§ 141.23 Inorganic chemical sampling and analytical requirements.

(b) If the result of an analysis made under paragraph (a) of (g) of this section indicates that the level of any contaminant listed in § 141.11 or § 141.62 exceeds the maximum contaminant level, the supplier of the water shall report to the State within 7 days and initiate three additional analyses at the same sampling point within one month.

* * * * *

(f) * * *

(10) *Fluoride:*

Methodology	Reference (method number)			
	EPA [1]	ASTM [4]	SM [3]	Other
Colorimetric SPADNS; with distillation	340.1	D1179–72A	43 A and C	
Potentiometric ion selective electrode	340.2	D1179–72B	413 B	
Automated Alizarin fluoride blue; with distillation (complexone)	340.3		413 E	129–71W [6]
Automated ion selective electrode				380–75WE [5]

* * * * * * * *

[1] "Methods of Chemical Analysis of Water and Wastes," EPA Environmental Monitoring and Support Laboratory, Cincinnati, Ohio 45268 (EPA–600/4–79–020), March 1979. Available from ORD Publications, CERI, EPA, Cincinnati, Ohio 45268. For approved analytical procedures for metals, the technique applicable to total metals must be used.

[3] "Standard Methods for the Examination of Water and Wastewater," 14th Edition, American Public Health Association, American Water Works Association, Water Pollution Control Federation, 1976.

[3] Techniques of Water-Resources Investigation of the United States Geological Survey, Chapter A-1, "Methods for Determination of Inorganic Substances in Water and Fluvial Sediments," Book 5, 1979, Stock #024-001-03177-9. Available from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.
[4] Annual Book of ASTM Standards, part 31 Water, American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.
[5] "Standard Methods for the Examination of Water and Wastewater," 16th Edition, American Public Health Association, American Water Works Association, Water Pollution Control Federation, 1985.
[6] "Fluoride in Water and Wastewater. Industrial Method #129-71W." Technicon Industrial Systems. Tarrytown, New York, 10591. December 1972.
[7] "Fluoride in Water and Wastewater," Technicon Industrial Systems. Tarrytown New York, 10591, February 1976.

(g) *Fluoride.* In addition to complying with paragraphs (a) through (f) of this section, systems monitoring for fluoride must comply with the requirements of this paragraphs.

(1)(i) Where the system draws water from one source, the system shall take one sample at the entry point to the distribution system.

(ii) Where the system draws water from more than one source, the system must sample each source at the entry points to the distribution system.

(iii) If the system draws water from more than one source and sources are combined before distribution, the system must sample at an entry point to the distribution system during periods representative of the maximum fluoride levels occurring under normal operating conditions.

(2) The state may alter the frequencies for fluoride monitoring as set out in paragraph (a) of this section to increase or decrease such frequency considering the following factors:

(i) Reported concentrations from previously required monitoring.

(ii) The degree of variation in reported concentrations and,

(iii) Other factors which may affect fluoride concentrations such as changes in pumping rates in ground water supplies or significant changes in the system's configuration, operating procedures, source of water, and changes in stream flows.

(3) Monitoring may be decreased from the frequencies specified in paragraph (a) of this section upon application in writing by water systems if the state determines that the system is unlikely to exceed the MCL, considering the factors listed in paragraph (g)(2) of this section. Such determination shall be made in writing and set forth the basis for the determination. A copy of the determination shall be provided to the Administrator. In no case shall monitoring be reduced to less than one sample every 10 years. For systems monitoring once every 10 years, the state shall review the monitoring results every ten years to determine whether more frequent monitoring is necessary.

(4) Analyses for fluoride under this section shall only be used for determining compliance if conducted by laboratories that have analyzed Performance Evaluation samples to within ±10% of the reference value at fluoride concentrations from 1.0 mg/l to 10.0 mg/l, within the last 12 months.

(5) Compliance with the MCL shall be determined based on each sampling point. If any sampling point is determined to be out of compliance, the system is deemed to be out of compliance.

6. § 141.32 is amended by revising the first sentence of paragraph (a) as follows:

§ 141.32 Public notification.

(a) If a community water system fails to comply with an applicable maximum contaminant level established in Subparts B or G, fails to comply with an applicable testing procedure established in Subpart C of this part, is granted a variance or an exemption from an applicable maximum contaminant level, fails to comply with the requirements of any schedule prescribed pursuant to a variance or exemption, or fails to perform any monitoring pursuant to section 1445(a) of the Act, the supplier of water shall notify persons served by the water system of the failure or grant by inclusion of a notice in the first set of water bills of the system issued after the failure or grant and in any event by written notice within three months.
* * *

* * * * *

7. Part 141 is amended by adding a new Subpart G to read as follows:

Subpart G—National Revised Primary Drinking Water Regulations: Maximum Contaminant Levels

Sec.
141.60 Effective dates.
141.61 [Reserved]
141.62 Maximum Contaminant Levels for Inorganic Contaminants.

Subpart G—National Revised Primary Drinking Water Regulations: Maximum Contaminant Levels

§141.60 Effective dates.

(a) [Reserved]

(b) Effective dates for § 141.62

(1) [Reserved]

(2) The effective date for § 141.62(b)(1) is October 2, 1987.

§141.61 [Reserved]

§141.62 Maximum Contaminant Levels for Inorganic Contaminants.

(a) [Reserved]

(b) The following Maximum Contaminant Levels for inorganic contaminants apply to community water systems.

Contaminant	Maximum contaminant level in mg/l
(1) Fluoride	4.0
(2) [Reserved]	

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

8. The authority citation for Part 142 continues to read as follows:

Authority: 42 U.S.C. 300g-2, 300-g3, 300g-4, 300g-5, 300j-4, and 300j-9.

9. §142.61 is added to read as follows:

§142.61 Variances from the maximum contaminant level for fluoride.

(a) The Administrator, pursuant to Section 1415(a)(1)(A) of the Act, hereby identifies the following as the best technology, treatment techniques or other means generally available for achieving compliance with the Maximum Contaminant Level for fluoride.

(1) Activated alumina absorption, centrally applied

(2) Reverse osmosis, centrally applied

(b) The Administrator in a state that does not have primary enforcement responsibility or a state with primary enforcement responsibility (primacy state) that issues variances shall require a community water system to install and/or use any treatment method identified in § 142.61(a) as a condition for granting a variance unless the Administrator or the primacy state determines that such treatment method identified in § 142.61(a) as a condition for granting a variance is not available and effective for fluoride control for the system. A treatment method shall not be considered to be "available and effective" for an individual system if the treatment method would not be technically appropriate and technically feasible for that system. If, upon application by a system for a variance, the Administrator or primacy state that issues variances determines that none of the treatment methods identified in § 142.61(a) are available and effective for the system, that system shall be entitled to a variance under the provisions of Section 1415(a)(1)(A) of the Act. The Administrator's or primacy state's determination as to the availability and effectiveness of such treatment methods shall be based upon

studies by the system and other relevant information. If a system submits information to demonstrate that a treatment method is not available and effective for fluoride control for that system, the Administrator or primacy state shall make a finding whether this information supports a decision that such treatment method is not available and effective for that system before requiring installation and/or use of such treatment method.

(c) Pursuant to § 142.43(c)–(g) or corresponding state regulations, the Administrator or primacy state that issues variances shall issue a schedule of compliance that may require the system being granted the variance to examine the following treatment methods (1) to determine the probability that any of these methods will significantly reduce the level of fluoride for that system, and (2) if such probability exists, to determine whether any of these methods are technically feasible and economically reasonable, and that the fluoride reductions obtained will be commensurate with the costs incurred with the installation and use of such treatment methods for that system:

(1) Modification of lime softening
(2) Alum coagulation
(3) Electrodialysis
(4) Anion exchange resins
(5) Well field management
(6) Alternate source
(7) Regionalization

(d) If the Administrator or primary state that issues variances determines that a treatment method identified in § 142.61(c) or other treatment method is technically feasible, economically reasonable, and will achieve fluoride reductions commensurate with the costs incurred with the installation and/or use of such treatment method for the system, the Administrator or primacy state shall require the system to install and/or use that treatment method in connection with a compliance schedule issued under the provisions of Section 1415(a)(1)(A) of the Act. The Administrator's or primacy state's determination shall be based upon studies by the system and other relevant information.

PART 143—NATIONAL SECONDARY DRINKING WATER REGULATIONS

10. The authority citation for Part 143 is revised to read as follows:

Authority: 42 U.S.C. 300g–1(c), 300j–4, and 300j–9.

11. Part 143, § 143.3 is amended by adding the following entry to the table between the entries corrosivity and foaming agent:

§143.3 Secondary maximum contaminant levels.

* * * * *

Contaminant	Level
* * * * *	
Fluoride	2.0 mg/l.
* * * * *	

12. Part 143 is amended by adding a new § 143.5 to read as follows:

§ 143.5 Compliance With secondary maximum contaminant level and public notification for fluoride.

(a) Community water systems, as defined in 40 CFR § 141.2(e)(i), that exceed the secondary maximum contaminant level for fluoride as determined by the last single sample taken in accordance with the requirements of § 141.223 or any equivalent state law shall send the notice described in (b) to (1) all billing units generally, (2) all new billing units at the time service begins, and (3) the state public health officer.

(b) The notice to be used by systems which exceed the secondary MCL shall contain the following language and no additional language except as necessary to replace the asterisks:

Public Notice

Dear User,

The U.S. Environmental Protection Agency requires that we send you this notice on the level of fluoride in your drinking water. The drinking water in your community has a fluoride concentration of [1] milligrams per liter (mg/l).

Federal regulations require that fluoride, which occurs naturally in your water supply, not exceed a concentration of 4.0 mg/l in drinking water. This is an enforceable standard called a Maximum Montaminant Level (MCL), and it has been established to protect the public health. Exposure to drinking water levels above 4.0 mg/l for many years may result in some cases of crippling skeletal fluorosis, which is a serious bone disorder.

Federal law also requires that we notify you when monitoring indicates that the fluoride in your drinking water exceeds 2.0 mg/l. This is intended to alert families about dental problems that might affect children under nine years of age. The fluoride concentration of your water exceeds this federal guideline.

Fluoride in children's drinking water at levels of approximately 1 mg/l reduces the number of dental cavities. However, some children exposed to levels of fluoride greater than about 2.0 mg/l may develop dental fluorosis. Dental fluorosis, in its moderate and severe forms, is a brown staining and/or pitting of the *permanent* teeth.

Because dental fluorosis occurs only when *developing* teeth (before they erupt from the gums) are exposed to elevated fluoride levels, households without children are not expected to be affected by this level of fluoride. Families with children under the age of nine are encouraged to seek other sources of drinking water for their children to avoid the possibility of staining and pitting.

Your water supplier can lower the concentration of fluoride in your water so that you will still receive the benefits of cavity prevention while the possibility of stained and pitted teeth is minimized. Removal of fluoride may increase your water costs. Treatment systems are also commercially available for home use. Information on such systems is available at the address given below. Low fluoride bottled drinking water that would meet all standards is also commercially available.

For further information, contact [2] at your water system.

[1] PWS shall insert the compliance result which triggered notification under this Part.

[2] PWS shall insert the name, address, and telephone number of a contact person at the PWS.

(c) The effective date of this section is May 2, 1986.

[FR Doc. 86–6843 Filed 4–1–86; 8:45 am]
BILLING CODE 6560–50–M

Federal Register

Wednesday
April 2, 1986

Part III

Environmental Protection Agency

40 CFR Part 51

Dispersion Techniques Implemented Before Enactment of the Clean Air Act Amendments of 1970; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[AD-FRL-2935-4]

Dispersion Techniques Implemented Before Enactment of the Clean Air Act Amendments of 1970

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Section 123 of the Clean Air Act (Act) as amended in 1977, (42 U.S.C. 7423) states that the degree of emission limitation required for control of any pollutant under an applicable State implementation plan (SIP) shall not be affected by a stack height which exceeds good engineering practice or any other dispersion technique. Section 123 goes on to say, however, that this prohibition shall not apply to dispersion techniques implemented before enactment of the Clean Air Act Amendments of 1970 (December 31, 1970). Dispersion techniques include intermittent control systems (ICS).

On September 24, 1984, at 49 FR 37542, EPA proposed rules setting forth criteria for determining whether an ICS was implemented before December 31, 1970. Today's action establishes those criteria and incorporates slight changes as a result of public comment.

EFFECTIVE DATE: These rules are effective May 2, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Polkowsky, EPA, Office of Air Quality Planning and Standards (MD–15), Research Triangle Park, North Carolina 27711, telephone (919) 541–5540.

ADDRESS: All documents relevant to development of this regulation have been placed in Docket No. A–79–12, located in the Central Docket Section, located in Gallery One, West Tower, 401 M Street, SW., Washington, DC 20460. The docket may be inspected between 8 a.m. and 4 p.m. on weekdays. A reasonable fee may be charged for copying.

SUPPLEMENTARY INFORMATION:

Background

The EPA has established national ambient air quality standards (NAAQS) for air pollutants which protect the public health and welfare. Under the Act, States are required to develop SIP's to attain and maintain the NAAQS.

Two general methods for preventing violations of the NAAQS are emission limitations and dispersion techniques. Emission limitations limit, on a continuous basis, the quantity, rate, or concentration of pollutants released into the atmosphere from the sources. In contrast, dispersion techniques rely on atmospheric conditions to enhance dispersion of emitted pollutants so that ground-level concentrations of a pollutant near a source do not violate the NAAQS. Dispersion techniques do not limit emissions on a continuous basis. An ICS is a dispersion technique.

On September 24, 1984, at 40 FR 37542, EPA proposed regulations to define an ICS and to set forth criteria for determining whether an ICS was implemented before December 31, 1970, for the purposes of allowing the ICS to be taken into account in establishing emission limitations. This proposal consisted of a list of eligibility criteria. The proposal also limited how a State can incorporate an eligible ICS into its SIP.

The Rule

This final rule governing eligibility consists of two definitions and general conditions on the use of an ICS. The rule defines what an ICS consists of and establishes criteria for determining whether the ICS shall be considered implemented before December 31, 1970, and thereby included in determining a source's emission limitation. The rule also establishes general criteria as to the extent to which an ICS implemented before December 31, 1970, may be taken into account in establishing SIP emission limits. The rule will be incorporated into Title 40, Code of Federal Regulations (CFR), sections 51.1 and 51.12.

Under the rule, an ICS will be considered implemented before December 31, 1970, if the system: (1) Was established and operational before December 31, 1970; (2) was designed and operated to reduce emissions when necessary to meet a stated air quality objective, such as an air quality standard; (3) included, as a minimum, air quality monitors, meteorological instrumentation or appropriate access to meteorological data, and the services of a meterologist or other qualified personnel; and (4) was adequately documented to meet these criteria. The air quality data used in operating the ICS must have been obtained from monitors that provided data consistent with the air quality objective and operation of the system. The meteorological information could come from a nearby weather station and the ambient concentration information could come from monitors owned or operated by contractors or other entities if appropriate. Documentation of procedures used in operating the ICS and other material supporting the claim of eligibility are required. The documentation should support the use of an ICS as a bona fide attempt to meet an air quality objective. While the documentation need not necessarily demonstrate that the air quality objective was always attained, it should show that emissions were in fact curtailed whenever warranted by meteorological conditions.

The regulation requires that any SIP which takes an ICS into account in establishing emission limitations must require that the source owner continuously operate and maintain an ICS which satisfies the performance specifications contained in 40 CFR Part 53 and which is otherwise at least as effective as it was before December 31, 1970. Moreover, the regulations provide that any such SIP must contain requirements which specify the procedures for operation of the ICS as well as recordkeeping and reporting requirements. In addition, the SIP must contain any other requirements which, together with the emission limitations, will assure that the NAAQS and prevention of significant deterioration (PSD) increments will be reliably attained and maintained. The EPA recommends that a State specify in its SIP that a revision to the emission limitation may be called for if there are NAAQS violations. In addition, a State may establish, as part of its SIP, provisions which would allow the State under appropriate circumstances to take direct enforcement action against an ICS-credited source for NAAQS violations. For example, a State might establish provisions similar to those contained in the nonferrous smelter regulations (at 40 CFR 57.401) which provide for presumptive liability for violations of the appropriate NAAQS in a designated liability area surrounding an ICS-credited source.

Response to Comments

Comments on the proposal were submitted by four commenters representing local air pollution control agencies and industry. Most of the comments concerned clarification of EPA's language and intent. The commenters felt the basic structure of the rule to be sound. The major issues raised by the commenters are addressed herein.

A. State Options in Crediting ICS

One commenter wanted explicit information on the rule's effect on existing SIP emission limitations. These rules allow a State to incorporate an ICS into the SIP provided it meets the

required criteria. However, the State may, if it wishes, establish SIP limits which do not take into account any ICS. Thus, there is no way at present to accurately assess where credit will be granted, and to what degree.

B. Limitations on ICS Control to the Current NAAQS or to the Design Goal of the ICS as of December 31, 1970

The commenter suggested that a more appropriate limiting factor for determining the credit to be given an ICS is the "designed capability" of the pre-1971 ICS to meet a standard air quality objective.

The EPA acknowledges that the proposed criteria for determining credit needs some clarification, but believes that the terminology proposed by the commenter is also too ambiguous. The EPA is modifying section 51.12(m)(2) to establish what it considers a more objective and straightforward criterion that reflects the essence of EPA's proposal as well as the commenter's suggestion. Under the modified criterion, credit must reflect the emission levels and associated ambient concentrations that would result if the ICS were the same as it was before December 31, 1970, and were operated as specified by the operating system of the ICS before December 31, 1970. To the extent that the degree of emission curtailment specified under the pre-1971 procedures cannot protect the NAAQS within the vicinity of the source with a reasonable degree of assurance under meteorological conditions considered in establishing SIP limits, the SIP must require additional emission reductions through constant controls. The additional emission reductions could be determined through modeling procedures similar to those described in the notice of proposed rulemaking. Where certain meteorological conditions considered in setting SIP limits were not precisely addressed in the operating procedures of the pre-1971 ICS, best estimates of the emission levels that would have been allowed under such conditions will be acceptable.

C. Modeling Required To Show Effectiveness of the ICS

One commenter stated the modeling exercise described in the preamble of the September 24, 1984, proposed rule to ascertain the effectiveness of the ICS was too inexact and that more objective criteria should be used. In response, EPA feels that the basic approach is correct and concedes that, for some sources, all operating parameters of an ICS and its associated source equipment may be difficult to assess for the purposes of modeling ambient pollutant levels to the accuracy of today's best models. The method, however, is only an example and other measures of the source's emission reductions under an ICS in controlling emissions could be used. The EPA believes that it is reasonable to allow a State some flexibility in determining the degree to which an ICS may be taken into account in establishing a SIP emission limit. The EPA will approve a method which reasonably assesses the ability of the ICS to reduce emissions for systems designed before December 31, 1970, when such systems are used for limiting emissions at locations in the vicinity of the source. The EPA is willing to work with States wishing to allow credit for ICS in developing methodology acceptable to them for evaluating ICS performance as part of their SIP submittal. In any event, any SIP credit would have to be submitted for approval to EPA as a SIP revision.

D. Definition of the Term "Implemented"

One commenter basically agreed that there is some justification for interpreting the term "implemented" with respect to an ICS in a more limited fashion than in existence for tall stacks since the financial commitments for a tall stack are much greater than for an ICS. That commenter, however, indicated that implementation of an ICS entailed more significant cost factors than air quality monitors and that there is a sufficient cost commitment in an ICS to warrant more flexibility in defining "implemented." Another commenter also argued that an ICS involved significant costs in addition to monitors and argued that EPA should define "implemented" in a manner similar to "in existence," i.e., an ICS should be considered implemented at the point when binding commitments are made to establish the ICS.

The EPA continues to believe that the term "implemented" with respect to an ICS should be defined in a much more limited way than "in existence" with respect to tall stacks.

First, EPA believes that the choice of the word "implemented" was purposeful and indicates that Congress intended that mere commitments to establish an ICS should not suffice. The common use meaning [1] of the word "implement" is "to carry into effect, fulfill, accomplish." [2] Clearly, the choice of "implemented" suggests measures beyond merely making financial commitments.

Moreover, under EPA's regulations a stack is considered to be in existence when binding contracts are made only if cancellation or modification of the contracts would result in substantial loss to the owner or operator. The EPA does not consider the preoperational costs that would be incurred in setting up an ICS to be substantial. While language in the preamble to the notice of proposed rulemaking suggests that EPA took into account primarily the costs of air monitors in determining the definition of "implemented," EPA in fact considered most of the important elements of an ICS that would provide an acceptable degree of reliability. In "Comparison Between Pre-Construction Costs of an Intermittent Control System and a Tall Stack," [3] Docket Item No. II–A–I, EPA found that the preoperational outlays for such an ICS, taking into account costs of air pollution monitors, meteorological data instruments, communication network, and system operation development (including air quality modeling), and thus including the major components listed in section 50.12(n) were far less than those of a typical tall stack. The EPA has adjusted its estimate of the cost of an ICS by also considering initial design and systems analysis costs. The adjusted costs take into account all the preoperational costs referred to by the commenters. Even with these additional costs, the preoperational outlay for an ICS is far less than the costs of building a typical tall stack. In fact, the total costs of the ICS when fully implemented are approximately the same as, or less than, the costs of breaching a binding contract for construction of a typical tall stack. The nonrecoverable costs for setting up a reasonably sophisticated ICS are in the range of $100,000–200,000 for a $10–20 million source. The EPA does not consider such preoperational costs to be substantial.

The reasonableness of adopting a limited definition of "implemented" is also established by Congress' harsh criticism of ICS. The House Committee that originated section 123 emphasized that such systems were unreliable and difficult to enforce, had adverse environmental impacts due to their unreliability and due to enhanced dispersion of pollutants, and placed heavy resource burdens on State and

[1] See *Lubrizol v. EPA*, 562 F.2d 806, 816 (D.C. Cir. 1977).

[2] Webster's New World Dictionary, College Edition, 730 (1968).

[3] The document was prepared by the Policy Development Section, which is part of the Standards Implementation Branch in the Office of Air Quality Planning and Standards at EPA.

local agencies because of enforcement difficulties [H.R. Rep. No. 95–294, 1st Sess. 82–87 (1977)]. Thus, use of an ICS poses adverse consequences in addition to those associated with the use of a tall stack—i.e., problems of reliability in maintaining air quality standards and enforcement burdens. Taking into account these considerations together with the costs of a reasonably equipped ICS, it seems reasonable to grandfather an ICS for the indefinite future only if a source had actually placed into operation a reasonably reliable ICS before the statutory cut-off date.

Finally, EPA believes that Congress did not necessarily intend to grandfather an ICS solely because of expenditures made before 1971. Mere expenditures would not guarantee an ICS of reasonable reliability since the reliability would depend not only on the equipment employed, but the nature of the operating procedures actually developed. The EPA believes that it is consistent with Congressional intent to grandfather for the indefinite future only an ICS whose reliability was insured by measures taken before 1971.

In light of these considerations, EPA believes that the proposed criteria for determining whether an ICS should be considered implemented before 1971 are basically sound. Nevertheless, the EPA believes that certain minor changes, as well as additional flexibility in the definition, are warranted.

Specifically, the requirement that curtailments occur whenever warranted by meteorological or ambient air quality conditions is designed to confirm that the grandfathered ICS was reasonably reliable. An ICS that became operational just prior to December 31, 1970, would likely be unable to demonstrate its reliability based on operation prior to 1971.
Hence, the regulations have been modified so that a showing of reliability for such an ICS may be based on operation after December 30, 1970, but in accordance with the pre-1971 designed capacity.

E. Ownership of ICS Components

One commenter argued that EPA's proposed regulations [§ 51.12(m)(6)(i)] requiring that a grandfathered ICS be operated by a source owner or operator in effect prohibits a source from relying on use of an ICS where a State or local authority operated an air monitoring network prior to December 31, 1970, and hence is overly restrictive. The commenter also argued that the proposed regulations make no provision for the use of a monitoring network operated by a consultant for a consortium of industries.

The EPA's intention under these rules was that the major components of a grandfathered ICS be operated by an affected source. However, EPA believes it reasonable to allow grandfathering of an ICS which relies upon an air monitoring system co-owned and operated with a local authority or other sources, provided the State can show that the source had (and continues to have) ready access to the data from that monitoring network and the monitoring network allows for reliable operation of the ICS, consistent with the air quality objective and design of the system. The regulations [§ 51.12(m)(6)(ii)] have been modified accordingly. The notice of proposed rulemaking also explained that a grandfathered ICS could rely on meteorological data from a weather station not owned or operated by the source if such station provided sufficient and appropriate data for use in an ICS, as reflected in § 51.12(h)(13)(ii). Section 51.12(m)(6)(ii) has been modified to reflect this intent.

F. Physical Requirements of an ICS

One commenter maintained that the requirements for determining whether an ICS is implemented should be limited to meteorological instrumentation and a system of established procedures for determining the need for curtailment. Air quality monitors should not be required because they may not have been cost effective or readily available in 1970. The commenter claims that a reliable ICS could be based on emission cutbacks based solely on meteorological conditions.

As explained in the notice of proposed rulemaking, Congress was highly critical of ICS, emphasizing among other things their lack of reliability and enforceability.[4] Given this harsh criticism, EPA does not believe that Congress intended to allow the indefinite use of an ICS implemented before 1971 unless that ICS was designed to perform at some reasonable level of reliability. The EPA believes that the criteria enumerated in § 51.12(n) for considering an ICS implemented are not excessively restrictive. To the contrary, EPA believes that the criteria are essential to provide an acceptable minimum degree of reliability.

The requirement for the use of air quality monitors is particularly critical for assuring some minimum level of reliability in attaining an air quality based goal. A system using only meteorological conditions as a basis for decisions on ambient air levels of a pollutant has no mechanism for measuring effectiveness of the operation of the ICS. The air quality monitors are essential for ascertaining whether emission reductions called for by the operating procedures are working to maintain acceptable pollutant levels. Because ambient meteorological conditions can change rapidly, the pollutant monitors serve as the only check on the ICS actions. To apply such a system to today's NAAQS would not provide adequate protection. The commenter's statement that air quality monitors may not have been cost effective or practically feasible in 1970 is without foundation. Air quality monitors to measure the major pollutants of concern—particulate matter and sulfur dioxide—were available in 1970. The approximate cost of a sulfur dioxide monitor capable of continuous measurement in 1970 was $7,000.[5]

G. Area-Wide Reductions by Source Cutbacks

One commenter felt that the proposed definition of an ICS appears to be too restrictive because it would preclude the temporary reduction in emissions from all sources at a facility as a means of controlling ambient concentrations, such as in emergency episodes. The commenter also maintained that the definition could result in unnecessarily restrictive emission limits in those cases where two highly unusual meteorological conditions might result in ambient pollutant concentrations above the standard. As discussed below, the definition of ICS has been modified slightly for clarity, but the modification is not substantive in nature. The definition of ICS in the regulations is clearly consistent with the statutory language and intent of Congress. Section 123(b) of the Act defines an intermittent control system as one which varies air pollution emissions with atmospheric conditions. Cases discussing the term have used the same definition. See, *Bunker Hill Co. v. EPA*, 572 F.2d 1286, 1291, n.4 (9th Cir. 1977); *Kemp et al. v. Hernandez et al.*, slip opinion, No. CA 83–7183, February 5, 1985.

Moreover, the regulations do not preclude the use of source cutback or shutdown for emergency episodes during unusual periods of extreme meteorological conditions. Indeed such regulations require that SIP's provide for such measures (see 40 CFR 51.12). Instead, the ICS regulations simply

[4] House Rep. No. 95–294, 1st Sess., pp. 82–87 (1977).

[5] Taken from computations found in "Cost of Monitoring Air Quality in the United States," prepared by PEDCo Environmental, Inc., for the U.S. EPA, November 1979, pp. 15–18. These pages have been placed in the docket for this rulemaking (No. A–79–12).

preclude an ICS from being taken into account in establishing SIP emission limitations unless the ICS was implemented before December 31, 1970, in accordance with the criteria specified by the regulations.

H. State's Option in Crediting an ICS

One commenter requested that EPA change the wording of § 51.12(m) so that an ICS shall be taken into account by any State developing emission limitations at sources with an ICS that meets the criteria, rather than the current language which states that an ICS may be taken into account. The EPA feels that the use of "may" instead of "shall" is appropriate. It should be noted that section 123 and the regulations only prohibit the use of dispersion techniques in setting emission limitations. The Act and the regulations do not preclude the use of grandfathered dispersion techniques. Section 123 does not mandate that grandfathered dispersion techniques must be taken into account in establishing emission limits. This construction of section 123 is supported by the House Report which states that the House bill was intended to permit the Administrator to allow credit for tall stacks in existence prior to enactment of the 1970 Act.[6] In any event, section 116 of the Act provides that States are free to adopt SIP requirements more stringent than the minimum otherwise required by the Act.

I. Miscellaneous Terminology Changes

As a response to comments, EPA has made some changes in terminology to the rulemaking to better explain the intent of the rule. In the preamble of the proposed rule, we referred to an operating system as a basic requirement for an implemented ICS. However, in the proposed rule, we referred to a requirement of an operations manual (which might be construed to mean a published document) which is more restrictive and precludes other means of documentation of an operating system. In today's rule, EPA has referred consistently to an operating system as described in the preamble of the proposal, not specifically limited that to an operations manual as a singular requirement of an ICS.

The EPA has clarified the definition of ICS at section 51.1(n) to indicate that an ICS involves the varying of emissions according to meteorological conditions and/or ambient concentrations of the pollutant in question. The EPA has also clarified section 51 to indicate that an ICS may be grandfathered only if it is demonstrated that it will assure attainment of PSD increments as well as the NAAQS.

J. ICS Improvements

One commenter wanted EPA to clarify that making improvements to an ICS did not disqualify it from becoming part of the SIP, if it met the eligibility criteria. This is indeed the case. The source may operate its improved ICS; however, improvements in the ICS and or increased emission reductions specified by the operating system after December 31, 1970, cannot be considered in determining the degree of credit to be given the ICS.

Assistance to States

The EPA will provide assistance to any State which adopts this rule and wishes to incorporate an ICS for a specific source into its SIP. This assistance will include information on calculating constant emission control equivalents for that ICS, as well as techniques for ensuring that the operation of the ICS will protect the NAAQS. Since this type of assistance needs to be source specific and will only be developed for a limited number of sources, no general guidance document was prepared as part of this rule-making. It should be noted, however, that any such assistance will be subject to full public review as required by any SIP action.

Attainment/Nonattainment Designations

The EPA, in accordance with section 107 of the Act, has made designations of attainment/nonattainment for various areas (43 FR 40412, 43 FR 40502, 43 FR 45993). Some areas were designated nonattainment or unclassifiable because reductions in ambient pollutant levels achieved by an ICS could not be incorporated into the SIP. As a result of today's promulgation, States may request reclassification to attainment of the affected area based upon reductions in ambient pollutant levels achieved by an approved ICS. States requesting reclassification of an area to attainment based on an eligible ICS will be required to demonstrate that the appropriate NAAQS will be attained and maintained with continued use of the ICS as part of the established SIP emission limits.

Classification

Under Executive Order 12291, EPA is required to judge whether a rule is major and therefore subject to procedural review requirements. The Administrator finds this rule to be a nonmajor action not subject to the procedural requirements of Executive Order 12291.

This determination of nonmajor is based upon an analysis of the criteria specified in Executive Order 12291. An action is deemed major if the action will: (1) Have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individuals, industries, Federal, State, or local government agencies; or (3) have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule could result in a decrease in expenditures for required pollution control equipment at the affected sources because the amount of expenditures necessary to comply with applicable air pollutant emission limitations by qualifying sources would generally be less than what would otherwise be required to meet emission limitations, which are based entirely on the use of constant controls. Sources not qualifying are currently subject to requirements to reduce air pollutant emissions and would not be subject to additional requirements as a result of this rule. Therefore, this rule meets none of the criteria for designation as a "major rule" under the context of Executive Order 12291. The EPA has submitted this regulation to the Office of Management and Budget (OMB) for their reiview in accordance with Executive Order 12291. Any comments received from OMB on this regulation have been included in the public docket.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator certifies that the attached rule will not have a significant economic impact on a substantial number of small entities. This rule would make available to a few sources the opportunity to request modification of emission limitations based upon use of ICS prior to December 31, 1970. The recordkeeping requirements in this regulation do not come under the Paperwork Reduction Act (44 U.S.C. 3051, et seq.) because they should impact fewer than 10 facilities.

List of Subjects in 40 CFR Part 51

Administrative practice and procedure, air pollution control, intergovernmental relations, reporting and recordkeeping requirements, ozone, sulfur oxides, nitrogen dioxide, lead, particulate matter, hydrocarbons, and carbon monoxide.

[6] H.R. Report No. 95-294, 1st Sess. p. 93 (1977).

Dated: March 25, 1986.

Lee M. Thomas,

Administrator.

Part 51, Chapter I of Title 40, Code of Federal Regulations, is amended to read as follows:

PART 51—[AMENDED]

1. The authority citation for Part 51 continues to read as follows:

Authority: Sec. 301(a), Clean Air Act (42 U.S.C. 1857(a)), as amended by sec. 15(c)(2), Pub. L. 91-604, 84 Stat. 1713, unless otherwise noted.

2. A new paragraph (nn) is added to § 51.1 to read as follows:

§ 51.1 Definitions.

* * * * *

(nn) Intermittent control system (ICS) means a dispersion technique which varies the rate at which pollutants are emitted to the atmosphere according to meteorological conditions and/or ambient concentrations of the pollutant, in order to prevent ground-level concentrations in excess of applicable ambient air quality standards. Such a dispersion technique is an ICS whether used alone, used with other dispersion techniques, or used as a supplement to continuous emission controls (i.e., used as a supplemental control system).

3. New paragraphs (m) and (n) are added to § 51.12 to read as follows:

§ 51.12 Control strategy: general.

* * * * *

(m) The use of an intermittent control system (ICS) may be taken into account in establishing an emission limitation for a pollutant under a State implementation plan, provided:

(1) The ICS was implemented before December 31, 1970, according to the criteria specified in § 51.12(n).

(2) The extent to which the ICS is taken into account is limited to reflect emission levels and associated ambient pollutant concentrations that would result if the ICS was the same as it was before December 31, 1970, and was operated as specified by the operating system of the ICS before December 31, 1970.

(3) The plan allows the ICS to compensate only for emissions from a source for which the ICS was implemented before December 31, 1970, and, in the event the source has been modified, only to the extent the emissions correspond to the maximum capacity of the source before December 31, 1970. For purposes of this subparagraph, a source for which the ICS was implemented is any particular structure or equipment the emissions from which were subject to the ICS operating procedures.

(4) The plan requires the continued operation of any constant pollution control system which was in use before December 31, 1970, or the equivalent of that system.

(5) The plan clearly defines the emission limits affected by the ICS and the manner in which the ICS is taken into account in establishing those limits.

(6) The plan contains requirements for the operation and maintenance of the qualifying ICS which, together with the emission limitations and any other necessary requirements, will assure that the national ambient air quality standards and any applicable prevention of significant deterioration increments will be attained and maintained. These requirements shall include, but not necessarily be limited to, the following:

(i) Requirements that a source owner or operator continuously operate and maintain the components of the ICS specified at § 51.12(n)(3)(ii)–(iv) in a manner which assures that the ICS is at least as effective as it was before December 31, 1970. The air quality monitors and meteorological instrumentation specified at § 51.12(n) may be operated by a local authority or other entity provided the source has ready access to the data from the monitors and instrumentation.

(ii) Requirements which specify the circumstances under which, the extent to which, and the procedures through which, emissions shall be curtailed through the activation of ICS.

(iii) Requirements for recordkeeping which require the owner or operator of the source to keep, for periods of at least 3 years, records of measured ambient air quality data, meteorological information acquired, and production data relating to those processes affected by the ICS.

(iv) Requirements for reporting which require the owner or operator of the source to notify the State and EPA within 30 days of a NAAQS violation pertaining to the pollutant affected by the ICS.

(7) Nothing in this paragraph affects the applicability of any new source review requirements or new source performance standards contained in the Clean Air Act or 40 CFR Subchapter C. Nothing in this paragraph precludes a State from taking an ICS into account in establishing emission limitations to any extent less than permitted by this paragraph.

(n) An intermittent control system (ICS) may be considered implemented for a pollutant before December 31, 1970, if the following criteria are met:

(1) The ICS must have been established and operational with respect to that pollutant prior to December 31, 1970, and reductions in emissions of that pollutant must have occurred when warranted by meteorological and ambient monitoring data.

(2) The ICS must have been designed and operated to meet an air quality objective for that pollutant, such as an air quality level or standard.

(3) The ICS must, at a minimum, have included the following components prior to December 31, 1970:

(i) *Air quality monitors*—An array of sampling stations whose location and type were consistent with the air quality objective and operation of the system.

(ii) *Meteorological instrumentation*—A meteorological data acquisition network (may be limited to a single station) which provided meteorological prediction capabilities sufficient to determine the need for, and degree of, emission curtailments necessary to achieve the air quality design objective.

(iii) *Operating system*—A system of established procedures for determining the need for curtailments and for accomplishing such curtailments. Documentation of this system, as required by paragraph (r)(4), may consist of a compendium of memoranda or comparable material which define the criteria and procedures for curtailments and which identify the type and number of personnel authorized to initiate curtailments.

(iv) *Meteorologist*—A person, schooled in meteorology, capable of interpreting data obtained from the meteorological network and qualified to forecast meteorological incidents and their effect on ambient air quality. Sources may have obtained meteorological services through a consultant. Services of such a consultant could include sufficient training of source personnel for certain operational procedures, but not for design, of the ICS.

(4) Documentation sufficient to support the claim that the ICS met the criteria listed in this paragraph must be provided. Such documentation may include affidavits or other documentation.

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Federal Register

Vol. 51, No. 63

Wednesday, April 2, 1986

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PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
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Code of Federal Regulations

General information, index, and finding aids	523-5227
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Laws 523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, APRIL

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

5 CFR
530.....11007
Proposed Rules:
530.....11043

7 CFR
247.....11008
272.....11009
273.....11009
418.....11285
436.....11285
444.....11286
445.....11291
1106.....11297
1944.....11298
Proposed Rules:
52.....11043
652.....11053
729.....11274
1040.....11053
1240.....11313

9 CFR
51.....11299
Proposed Rules:
93.....11316

14 CFR
39.....11300, 11301
Proposed Rules:
39.....11321, 11322

15 CFR
806.....11012

19 CFR
18.....11012
24.....11012
101.....11013
112.....11012
113.....11012
141.....11012
144.....11012
146.....11012
178.....11012
191.....11012

21 CFR
74.....11014
82.....11014
558.....11014
Proposed Rules:
74.....11054
150.....11054
812.....11266

22 CFR
501.....11014
503.....11014
504.....11016
505.....11016
506.....11014
511.....11014
516.....11014
525.....11014

23 CFR
Proposed Rules:
645.....11055

24 CFR
200.....11198
215.....11198
235.....11198
236.....11198
247.....11198
812.....11198
880.....11198
881.....11198
882.....11198
883.....11198
884.....11198
886.....11198
912.....11198

26 CFR
1.....11016, 11302
602.....11016
Proposed Rules:
1.....11323, 11324

28 CFR
2.....11017

29 CFR
1602.....11017

30 CFR
Proposed Rules:
250.....11324
935.....11055

31 CFR
Proposed Rules:
51.....11056

32 CFR
701.....11018
706.....11303-11305

33 CFR
165.....11019

39 CFR
Proposed Rule:
111.....11324

40 CFR
51.....11414
52.....11019, 11305
60.....11021
61.....11021
141.....11396
142.....11396
143.....11396
166.....11306
180.....11306-11308
Proposed Rules:
50.....11058

41 CFR
101-20.....11022
101-39.....11022

42 CFR
57.....11029
405.....11142

47 CFR
65.....11033
67.....11035
73.....11037-11040
Proposed Rules:
69.....11328
73.....11058,

11072
76 11073
90 11075

48 CFR

Proposed Rules:
1401 11075
1405 11075
1406 11075
1408 11075
1414 11075
1415 11075
1419 11075
1420 11075
1428 11075
1437 11075
1452 11075
1453 11075

49 CFR
565 11309
571 ..... 11309, 11310

50 CFR
642 ..... 11041, 11310
650 11041
671 11041

Proposed Rules:
23 11328

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List April 1, 1986.